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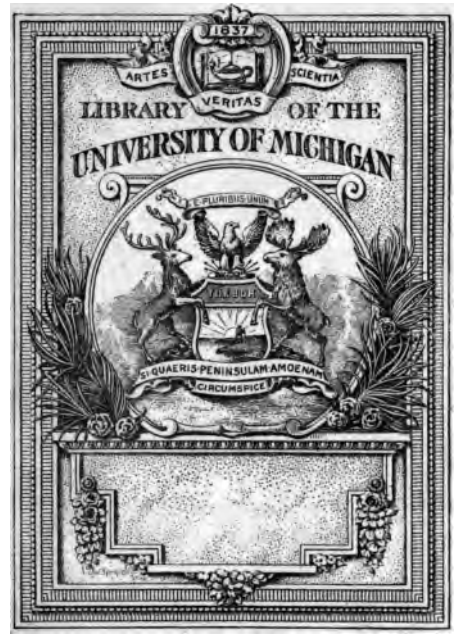
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Michigan

Michigan

Its History and Government

BY

WEBSTER COOK

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SAGINAW, MICH.

New York
THE MACMILLAN COMPANY
LONDON: MACMILLAN & CO., LTD.
1905
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Set up and Electrotyped. Published
August, 1905

THE MASON PRESS
Syracuse, New York, U. S. A.

PREFACE

Two things in the following pages need perhaps a word of explanation. It will be observed that the first four or five chapters are devoted to a history of the region that now constitutes our state. For a history as long and picturesque as the history of this region has been the space allotted here is entirely inadequate for anything more than a summary treatment. In the past there has been a marked indifference to our early conditions. Most of the people within our boundaries are either those who have migrated to the state, or the children of the immigrants, and of all our purely American population this is entirely true. It is perhaps not strange that they do not think of the state as having a past of any considerable length. And yet, before American conditions began here, these regions were the scene of some of the most stirring events in all American history and some of the most important. From the time of its founding to the close of the critical period beginning with the French and Indian War, that is, even up to the beginning of the Nineteenth Century, Detroit was the key to the control of the whole of the Old Northwest Territory. No other place in America has had so many vicissitudes of history or changed hands so many times; even during the War of 1812, if we may trust British judgment, its fate was not fully decided. What would have been the course of the history of the United States, if this post and all the region depending upon it had remained a part of

Canada? But it is impossible to dwell upon these matters now. If the few pages devoted to the subject of the history shall serve to arouse some little interest in one of the most interesting chapters of the history of the continent, their purpose will have been accomplished.

Up to the present time, no thorough and adequate history of Michigan has been written and very much material now comparatively easily accessible, has never been given careful and thorough consideration. This fact has increased very greatly the difficulty of preparing these few chapters. They represent, in spite of their brevity, a great amount of time and labor, as I have examined, with such care as time has permitted, all material to which I could gain access.

Another point that perhaps needs some explanation is the character of the work on the government of the state. I never have valued highly the ordinary work on Civil Government in our public schools. The committing to memory of the mere facts of government, without any understanding of the principles that underlie them or any knowledge of the processes through which they have come about, has not seemed to me a more valuable school exercise than the committing of any other comparatively unrelated facts. That such facts have practical value is largely a mistaken notion, and even if they have, most of the time spent upon them is waste time, because without any of our pedagogic efforts the average boy, by the time he is grown up, will know about everything that he ought to know of what the ordinary Civil Governments contain. The minutiæ of Civil Government one learns from experience, so far as one needs to learn and remember them. In fact he must do so, if he learns them at all, for the details of

governmental affairs are constantly changing, and facts of this kind learned twenty-five years ago would now be so inaccurate as to be useless.

But there are many questions which people cannot answer for themselves, many things that they will not of themselves be able to understand. In the average community, for example, or among ordinarily well educated people, how many have any proper conception of the relation of the state and the nation? or of the source of authority of a state government? or of the difference in position with regard to its powers between the state and the national government? and dozens of other things of this kind. Great principles underlie all English and American political development, which it has taken the slow process of ages to unfold and make articulate in existing institutions. It is in the understanding of these principles and of their processes of development, rather than in the everyday details, that the field of Civil Government properly lies. It should be a science starting from its fundamental principles, as does chemistry or any other properly developed science, but taking more careful account of the historical processes involved.

One other thing greatly needs to be mentioned. The Civil Government that is now most studied and that commands the most attention from both authors and teachers, is the government of the United States. The glamor of national politics and the splendor of national operations, because of the great scale on which they are necessarily carried on, has taken the attention of students away from the things that are essential and fundamental. For the student really bent upon understanding the character of our institutions national affairs are the last to demand attention. For national

institutions are in a certain sense artificial. They were made to order for a certain occasion and lack historical background. The principles they embody and even their forms were simply adaptations of what had already been worked out elsewhere, and for different purposes. However interesting and important they may seem, evidently enough their interest and importance is secondary as compared with the institutions from which they were derived, and their own character can be understood only as these others are understood. On the other hand all that is most valuable, both in the forms and spirit of our government, has come down to us through long ages. It is the achievement of our race, often worked out in bitterness and suffering. That the state, and not the nation, is the inheritor of all that the past has handed down to us is the first great fact to challenge our attention. For our state institutions come with almost unbroken line of descent through many generations and many centuries. All of those things that are most dear and most important to us depend upon the state for their preservation, and naturally so from the very character of our history, and besides they have developed from the smallest beginnings, in the smallest of what we would now call local communities. It is the elementary and comparatively simple institutions that have the longest histories and embody the most fundamental principles, and it is to these, to their historical development, and to the principles that underlie them, that our attention should be first given. If we wish to study only the outward forms of institutions, it is perhaps well to take first those that are most striking, but if our purpose is to get at their real character and the principles they embody, then we must take those that are fundamental,

and those that best illustrate the slow unfolding of the ideas from which they have arisen. From this latter point of view, the study of the organization of the state, both local and general, must be considered the foundation of all our civil government.

In the use of this little manual one thing should be kept in mind. The best and most lasting knowledge of a subject is gained by immediate touch with it. This book itself is not the thing to be studied but is simply a guide to study. The government of the Territory of Michigan should be studied in the Ordinance of 1787, and our state governments in our two state constitutions and in the laws which govern the great civic machinery of the state and its districts. These laws should be so studied and such an understanding of the institutions developed as to do away with the set and isolated rules of the ordinary work of civics. The insight thus gained should be corrected and reinforced by a study of the earlier institutional forms, as nearly first hand as possible, and of the character of the changes that have brought them to their present conditions. Such a thorough first hand study of the growth of the organization of the state will give the student a good working knowledge of the government, and train him to the proper methods of investigation for all subjects of this kind.

In the preparation of this work a number of people have been of material assistance to me. To my late friend and associate in the history department here, Miss Phoebe Fairchild, I am especially indebted for the minute and critical care with which she has examined every page of the manuscript, both as to structure and the character of the material. The following pages owe much to her keen insight and trenchant criticism.

Another of my associates, Miss Macy Kitchen, has been of constant assistance in the preparation of the work, and has given me unsparingly of her time as the need has arisen. I have also had occasion to make inquiries with regard to certain facts connected with various points of local history and I have invariably received courteous and painstaking answers to all my letters, notwithstanding that considerable research has sometimes been necessary to ascertain the facts asked for. The inquiries of this kind I have made, however, have only the more fully revealed that there is now in Michigan a rich field for local investigation, and many facts, both in connection with our local government and with the development of our school system, can only be established in this way.

WEBSTER COOK.

Saginaw, April 24, 1905.

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MICHIGAN

CHAPTER I

GEOGRAPHY

1. References

The main facts of this chapter are gathered from the volumes of the State Geological Survey, published at irregular intervals by the state beginning with 1873, and from a study of the United States Weather Maps and Reports. The State Geological Survey has, unfortunately, been undertaken almost entirely, not for scientific, but for economic reasons; the reports deal mainly with the mining interests of the Upper Peninsula, for the advantage of which most of the geological work has been undertaken, and with the mineral products of the Lower Peninsula. Thus the volumes now published do not constitute a systematic treatment upon the geological conditions found in this region. The ground covered by the various volumes, so far as they are at all useful for our present purposes, is as follows:

Vol. I. (1873), (deals entirely with Upper Peninsula), Part I., Iron Bearing Rocks; Part II., The Copper District; Part III., The Paleozoic Rocks. Vol. III. (1876), Part I., Geology of the Lower Peninsula. Vol. IV. (1881), The Marquette Region. Vol. V. (1895), Part I., Geology of the Upper Peninsula; Part II., Geology of Lower Michigan. Vol. VI. (1899), Part I., Geological Report of Isle Royal; Part II., Keweenaw Point. Vol. VII. (1900), Part I., Monroe County; Part II., Huron County; Part III., Sanilac County. Vol. VIII. (1903), Part I., Clays and Shales; Part II., Coal; Part III., Marl. Vol. IX. (1904), Part I., St. Clair Delta; Part II., Gypsum.—Annual Report of the Board of Geological Survey of Michigan for the year 1901. Lansing, 1902. Arenac, Iosco, Ogemaw, Alcona counties, etc.—Article on Geography of Michigan, by Alexander Winchell; Tackabury's Atlas of Michigan, Detroit, 1885.*

2. Michigan is composed of two natural divisions, known as the Upper and Lower Peninsula, which,

though politically united by act of Congress, are nevertheless geographically and geologically quite distinct. The whole state lies north of 41° 44′ north latitude and west of 82° 25′ longitude west of Greenwich. Its westernmost point is almost 400 miles west of its easternmost, and the shore of Keweenaw is over 400 miles north of the northwest corner of the state of Ohio, while Gull Island, near Isle Royal, lies over 60 miles still further north. The state is of such shape, however, that these figures do not assist in determining its actual size, but the great difference in climate which the difference in the latitude indicates, and still greater geological differences, give an unusual variety of products for a single state. This we can understand by examining the two portions separately.

3. The Lower Peninsula lies north of Ohio and Indiana, which thus form its southern boundary. All the rest of its boundary is a shore; on the west, of Lake Michigan, and on the east, of Lakes Huron, St. Clair and Erie, and the magnificent straits connecting these, known as the St. Clair and Detroit rivers. At its northern point it is separated from the Upper Peninsula by the straits of Mackinaw. It is 280 miles in length, about 200 in breadth, and has an area of 35,000 square miles. Lake Michigan and Lake Huron lie at the same level above the sea—580 feet.[1] At each shore the land lies as a rule but a few feet above the lakes, but it gradually rises toward the center. Nearly across the middle, from the head of Saginaw Bay to the mouth of Grand River, is a great valley, nearly level throughout, and nowhere 100 feet above the lake level. The two portions of the peninsula thus formed have

[1] Lake Erie is thirteen feet lower. The levels of the lakes vary considerably through different periods, being several feet higher at some times than at others.

some geographical differences. South of the great valley the land is hilly and rolling and was once covered with hard wood or deciduous forests. It has for the most part a fertile soil and is now a rich and well settled agricultural district. The hills are nowhere high; the highest rise 600 feet above the lakes, and are in Hillsdale County at the source of four of our largest rivers. But even where such high hills occur the surrounding country is really much lower.

4. The northern portion rises from the great valley and the lakes to a great plateau 700 or 800 feet above the lake level, and culminates near Otsego Lake in a height of 1100 feet. This region was once covered with great pine forests, interspersed with tracts of hard wood. The pine is now all cut off, and the soil where it grew is usually sandy and poor, and sometimes almost barren. This whole region is thinly settled except where lumber interests have built up cities. But there is still considerable hard wood timber; the hard wood tracts have fertile soils, and, though restricted somewhat by the climate, they still offer considerable opportunities in the way of agriculture.

5. The uneven surface of this whole peninsula naturally results in many depressions, surrounded by higher land. There are thus many swamps and very many clear and beautiful small lakes. These are not only pleasant features of the landscape, but it is being discovered that many of them may become, and in fact are becoming, of very great economic importance. For, owing to the hardness of water in some of them, and in some that were formerly lakes and are now swamps, great beds of carbonate of lime have been formed, partly by precipitation and partly from the shells of myriads of small molluscs that have lived and

died in the favoring waters. This material, in which the state is shown to be very rich, is one of the ingredients of Portland cement, and as clay or shale, the other, is also abundant, the manufacture of cement is already one of the important industries of the state, and destined to greater development.

6. Michigan is of course covered by the usual drift material that covers all but the highest portions of the continent. The floor upon which this drift lies is the solid crust of the earth, and the peculiar shape of this crust gives new and important characteristics to the lower peninsula. For the great rock layers are so disposed that from all sides they gradually slope toward a central point somewhere near the center of the peninsula, thus forming a basin with a rounding bottom, and with edges corresponding roughly to the shore lines and southern state boundary. This great basin was once filled with sea water, even the highest portions of the peninsula showing unmistakable evidence of submersion, and the subsidence of this water left mineral deposits of various kinds which are now the source of enormous wealth. The best known of these is salt which underlies the state north of a line from Monroe to Muskegon, and for the production of which there are extensive works at Manistee, perhaps the greatest salt center in the world, in the Saginaw Valley and along the St. Clair and Detroit Rivers. The soda and other chemicals produced by the great works below Detroit and at Wyandotte and Bay City are also derived from the salt. There are also bromide works at Midland, and gypsum works (land plaster) near Grand Rapids, both from deposits more or less connected with the deposits of salt. Then the central portion of the basin is underlaid with coal. If

we take St. Louis as a center and strike a circle with a radius reaching to Jackson we shall include roughly the portion of the state in which coal abounds. The layers of coal, extensive as they are, are not so thick, hence not so easily worked, and often not so pure, as in the sister states farther south. Coal is, however, an important product and mines are now worked at Jackson and in the Saginaw Valley. Along the edges of the peninsula stone quarries, mostly of limestone, are apt to abound.

7. Agriculturally Michigan is too far north to be within the great corn belt, and hence is not within the great stock producing region. Yet much corn and stock are produced. At one time the state had the most productive wheat soil in America, but its fertility has been considerably impaired by ruthless methods of farming. The great bodies of water about the state considerably modify its climate, giving greater moisture, and moderating the changes of temperature, and Michigan is thus a highly favored fruit state. Apples flourish almost everywhere, and the fruit belt along the eastern shore of Lake Michigan has long been famous. Thus we see that its great lumber interests, at one time greater than anywhere else in America, but now rapidly declining, its salt and allied products, its coal and its marl, added to great agricultural and horticultural wealth, make this an unusually favored region.

8. When we cross the Straits of Mackinaw we find quite different conditions. This peninsula is about 330 miles long with an average breadth of perhaps 50 or 60; but it has two great projections from its otherwise tolerably regular outline, one to the south terminating at the mouth of the Menominee River, the other, like a great barb to the north, ending in Keweenaw Point.

The western portion of this peninsula lies north of Wisconsin which constitutes its only land boundary, and from which it is separated much of the way by the Montreal, the Brulé[1] and the Menominee Rivers. Lake Superior makes of its whole northern border a long and irregular coast line. The St. Mary's River flows along its eastern end, while Lakes Huron and Michigan bathe its southern shores. This peninsula with its outlying islands, the greatest and most picturesque of which is Isle Royal in Lake Superior, contains 16,000 square miles of surface, with a coast line, proportionately much greater than even that of the lower peninsula, of over 900 miles.

9. The Peninsula is naturally divided into an eastern and a western portion with markedly different characteristics. The line of demarcation may be roughly drawn from Marquette to Menominee, or a little west of the 37th meridian. East of that we have a rolling, hilly country, covered with the usual drift, and once a region of almost uninterrupted pine and deciduous forests. This portion nowhere rises more than 400 feet above Lake Superior. The pine has now nearly all been cut away, but there is still valuable hard wood timber. In places, generally where there are or have been deciduous forests, the soil is fertile, but the climate is severe, greatly restricting agricultural occupations. There are, however, deposits of bog iron that may some day be valuable, and many outcropping rocks, some of which have commercial value. Some of the rivers furnish excellent water power, and of course the Great Lakes are highways to all markets. Lake Superior is 22 feet higher than Lake Huron, and from this fact results a series of rapids in the St. Mary's

[1] In the older writings the "Bois Brulé."

River, making a portion of the river unnavigable. To overcome this the "Soo" Canal and locks have been built, at first by Michigan, but now controlled by the general government. Measured by the amount and value of the tonnage that passes it, this is the most important ship canal in the world. The rapids are also a source of enormous water power, which is now beginning to be utilized.

10. The topography of the western portion is entirely different. It is a broken, rocky, mountainous country, the mountains in some places rising 1,400 feet above lake level; but the valleys are quite apt to be filled with drift often to great depth. The rocks which form the mountains are torn and twisted to an enormous extent, showing that this was once a region for the play of great seismic forces, and contain rich deposits of minerals that have long made this region famous. Beginning at Keweenaw Point, and running southwest not far from the shore, through and out of the state, is a range of mountains that contain exceedingly rich copper deposits, and in addition silver and sometimes gold in paying quantities. This was thus the great copper mining center of the world until the development of some western mines that are now of greater importance. South of the copper range, and in various regions, as at Negaunee and Lake Michigamme, in the Menominee Range of mountains north of the Menominee River, and in the Gogebic Range in the extreme western part of the state, great deposits of iron are found, some of which, the magnetic ore, found in abundance in Michigan and seldom found elsewhere, is absolutely indispensable for the best grades of steel. Michigan is thus the second greatest copper state and the greatest of iron produc-

ing states. Other valuable mineral products are slate and building stone, graphite, mineral paints, mica, asbestos, oil stone, gypsum, lead and manganese, and there is now a report of feldspar. Several varieties of marble are found but none of them have yet proven of special economic importance, and there are here also large and valuable tracts of forests.

11. From this brief sketch we are able to see that in the variety and extent of its economic products Michigan must rank as one of the most remarkable states in the Union, as well as one of the most important.

12. Only a word needs to be said about climate. The great bodies of water about us must of course greatly affect climatic conditions. Lake Superior is always cold, and all the lakes may be about frozen over in very cold winters. They warm up but slowly in the spring; the advance of summer is thus greatly retarded, and summer itself of course somewhat modified when it comes. But in the fall the lakes cool slowly; winter is also checked, and its severity lessened. But great as these bodies of water are, they are not enough to overcome the general climatic conditions of the continent. If we take the United States weather maps and follow the paths of the great storms that sweep the country, we shall see that they move usually from west to east, and that the paths of their centers are nearer together in the longitude of the Great Lakes than anywhere else. We in Michigan thus get a somewhat condensed effect, so to speak, of the great air currents of the continent. If likewise we follow on a weather chart the isothermal lines, especially in fall and winter, we shall find a similar result. Starting with these lines on the Pacific coast they are much spread out and wide apart. As they pass eastward they ap-

proach each other until they reach the region of the lakes, and then again begin to diverge, but are not nearly as far apart on the Atlantic coast as on the Pacific. In other words, the cold of the Arctic regions, if we may so speak, presses farther down in the eastern than in the western portions of the continent, and farther in the center than at either edge. In the longitude in which we live, then, a difference of a few degrees of latitude will make a greater climatic difference than anywhere else in North America, a fact that in part accounts for the extreme difference between a "Lake Superior" winter and a winter in one of the southern counties, and with the retarding effect of the Great Lakes upon climate, gives in some ways greater restriction to agricultural operations in the upper peninsula than in, for example, the province of Manitoba.

CHAPTER II

MICHIGAN AND NEW FRANCE

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14. We who are now living in Michigan and know it as a settled, civilized community, in close touch with civilized conditions on every side, seldom stop to consider what must have been the situation of this region, and its relation to the outer world, before the present conditions were brought into existence. Now our natural communication is with the west and the south and the east, by way of Chicago, Cincinnati and Buffalo. Our present methods of communication, about all of which have been created in the last seventy years, our natural sympathy and intercourse with our own people, as distinguished from those of a different allegiance, and the powerful ties of an extensive domestic trade, much greater and more important to us than any foreign trade, all make us think of ourselves as a part of the great country lying mostly to the south of us, and this now seems to us our natural relation. But its naturalness is a sort of second nature, for a moment's thought will show that our original relations must have been quite different.

15. The ancestors of the present inhabitants of our two peninsulas were, of course, people of the old world. They approached the continent from the east, and the eastern coast was first to be settled. Michigan is remote from the coast, and its original connection would be with those coast regions to which there were the easiest routes of communication. Before the use of steam the rivers were the roads for interior traffic and travel, and if we study the topography of the country, we see that such roads do not lie through those of our sister states with which we are now in closest touch, but that the St. Lawrence River, with its tributary streams and waters, was the great natural high-

way to our doors. It was accordingly by this route that Michigan was first approached.

16. Now, it was this fact that gave character to our earliest history. For the French were the people first to take possession of the St. Lawrence Valley. They explored its vast territories and founded therein settlements; and the province which they first established came to be known as Canada. At a later period this same nation, through a series of as remarkable explorations as were ever made, laid claim to the whole Mississippi Valley, the very heart of this great continent of ours, and this vast region they called New France. Michigan at first, therefore, and this was its natural relation, was a part of Canada, and it was never anything else until almost the close of the eighteenth century. Its early history is accordingly an integral part of the history of Canada and of New France.

17. Of course, it is no part of our present purpose to study the history of Canada. But the French possession of the St. Lawrence Valley is the first great fact in our own history as well as in that of our neighbor to the north, and there are many other such events that we must know about in order to understand the peculiar character of our past.

In 1506 "one Denis of Honfleur explored the gulf of St. Lawrence." In 1534 Jacques Cartier, a bold sailor of St. Malo, explored the St. Lawrence River all the way up to the foot of its first rapids. He discovered the great gorge of the Saguenay; a little farther up on a high bluff, afterwards to become famous, he saw the squalid Indian village of Stadaconé; and on an island below the rapids, at the foot of a mountain he called Mont Real, he found the great Iroquois town of

Hochelaga. From this remarkable voyage of discovery there were two important results. In the first place from the Indians at Hochelaga Cartier heard wonderful stories of a land of gold and rubies, on farther to the west, and of people white like the French. China must be a little beyond, and Cartier and explorers who came after him were anxious to push forward in the direction this wonderful region was supposed to lie.

18. Then, ever since the voyage of Cabot in 1497, and possibly before, Norman, Breton, and Basque fishermen frequented the coast of Newfoundland. These from this same voyage of Cartier's began to learn that to trade with Indians was much more profitable than to fish for cod, and from fishermen gradually became fur traders. The trade thus started was, of course, at first small, but it grew steadily year by year, and by the end of the century had reached great proportions. Then the humble people who had begun and developed it were no longer allowed to enjoy it. For the Marquis de la Roche bargained with the King of France to settle Canada in return for a complete monopoly of its trade. It is of no importance to us that he failed. The important thing is that here we have a great characteristic feature of Canadian history. The schemes of settlement were based on the fur trade; to the end of French dominion in Canada that trade was a monopoly, and long after France had lost all her vast possesions in America, it continued to be the very source of all Canadian life and activity.

19. When Champlain founded Quebec in 1608, on the site of Stadaconé, events again conspired to lead him westward. He knew the stories Cartier had heard, and so was anxious to press in the direction of

the fabled region. Then he found a war raging between the Iroquois on the one hand, who had abandoned Hochelaga and were living in central New York, and on the other their kindred, the Hurons, living between Lake Simcoe and Georgian Bay, and some Algonquin tribes on the Ottawa. Now it was with these latter Indians that the French trade lay, even the distant Hurons coming each summer to the St. Lawrence, and so in the summer of 1609 Champlain joined them in an expedition up Lake Champlain. The Frenchman and his allies inflicted a defeat on the Iroquois which they never forgot, and what is more important, never forgave. They were ever afterward the inveterate foes of France; for half a century they threatened the very existence of the French province, and for nearly a whole century blocked all French progress by way of the upper St. Lawrence. In 1615 Champlain visited his friends on Georgian Bay, and possibly looked towards our shores from the other side of Lake Huron. This was the nearest to discovering China he ever came, although he remained at the head of his colony until his death on Christmas day, 1635.

20. When Quebec was founded, religious affairs were in charge of Recollet Priests, but in 1625 these were replaced by Jesuits. Two important changes almost immediately followed. Heretofore there had been complete tolerance in Canada. Huguenot and Catholic had both taken part in the operations of the new world. But now Canada was to be strictly Catholic and all Protestants were rigorously excluded. Then the Jesuits were filled with the highest missionary zeal, and deliberately entered upon the stupendous task of converting the continent. Thus a second great

motive, in addition to the fur trade, was brought into French operations in America. As the King of France himself took a hand in furthering both these great objects, the French soldier was everywhere supporting the French trader and the French priest.

21. Of course, in the eyes of the zealous missionaries, the heathen natives were children of the devil, and after looking around for awhile they came to look upon the Huron nation as the very center of Satan's kingdom in America. So hither in 1634 four missionaries were sent. The Indians were unwilling to receive them and even threatened to put them to death. But the mission was maintained in spite of the greatest of hardships; other missionaries came; help was sent up from Quebec; chapels were built; and houses were constructed such as the Indians had not before known; better fortifications were taught them, and by infinite patience, and tact, and kindness, the priests gradually won their way, and the Hurons changed to Christians.

22. While this work was being accomplished, the first two visits of white men were made to Michigan. The first in 1634 was made by a trader, Jean Nicolet, sent to the Indians beyond the Lake of the Hurons to interest them in French trade. He went by St. Mary's River and Mackinaw to and beyond Green Bay, where he seems to have established friendly relations with the Wisconsin Indians. The second was seven years later, when Father Jogues, one of the Huron missionaries, preached a sermon to a great concourse of Indians on the present site of Sault Ste. Marie.

23. It was a long time before another visit was made to this region, and the reason is found in one of those great tragedies that have everywhere marked the

pathway of savage history in America. The Hurons were the most advanced of the Northern Indians. They had tolerably settled places of abode, lived in houses, and cultivated the lands, and were markedly superior to any of the other tribes around them. But they were not the greatest warriors. That distinction belonged to their kindred, but bitterest enemies, the Iroquois, or Five Nations, of New York, by whom in 1649, the Huron Nation was practically destroyed. Two small remnants of their people escaped, one to Quebec where the French could afford but partial protection, the other across Lake Huron to our upper peninsula, where they wandered westward along the southern shore of Lake Superior.

24. This great catastrophe, of course, put a violent end to the Huron mission. Nearly all the missionaries were killed. The great plans of the Society of Jesus were frustrated, their great hopes destroyed. Even the Jesuit zeal for missionary work was for a time dampened; years elapsed before they again entered on their great task, and when the advance again began missionaries did not lead the way. This disaster undoubtedly delayed the establishment of missions, and such settlements as grew up about them, within what are now our borders.

After the visit of Jogues, it was seventeen years before a Frenchman again crossed the St. Mary's River, or passed the Straits of Mackinaw. Then in the year 1658 two adventurous traders, Peter Esprit Radisson and his brother-in-law, Sieur des Grosseilliers, passed by the old route of Nicolet to the Indians beyond Green Bay. They were gone two years and returned with a large cargo of furs. They immediately prepared for a second voyage, and in 1661 passed

along the whole southern shore of Lake Superior.[1] They were gone three years this time, and returned with a prodigious cargo of furs, which Radisson says, were worth £70,000.[2]

25. But Radisson and his companion were not the first to see the greatest of these inland lakes. So far as we know, that distinction belongs to a pious priest, Father René Menârd, who in 1660 went to the Indians around Lake Superior. He passed along the southern shore of the lake to Keweenaw Bay, where he founded the first mission in the Northwest. Menârd perished within a year, and three years later Claude Allouez set out to take up his work. But Allouez passed on farther west and at Chequamegon Bay found some Indians who were already Christians. They were the little band of fugitive Hurons. Here he established his station of La Pointe. In response to his call for help James Marquette and Claude Dablon came to the Lake Superior country, and in 1668 Marquette established the Mission of St. Mary's at the Falls of the St. Mary's River, which proved to be the first permanent hold of the white men in Michigan, and in the whole Northwest. Marquette, leaving others in charge of St. Mary's, passed on to La Pointe. While here the Sioux attacked the Hurons and drove the poor fugitives back east. The faithful missionary staid with them, and ultimately led them to the north side of the Straits of Mackinaw, where he established his second

[1] Radisson has left an account of this voyage, the first written description of this region. On their return the two traders were fined so heavily for going without a license that they went over to England and a result of their efforts was the forming of the Hudson Bay Company.

[2] *Radisson's Voyages,* Publications of the Prince Society, p. 241.

mission of St. Ignace, destined also to be a permanent station.

26. In the summer of 1671 the French performed the formal ceremony of taking possession of the whole interior of the continent. This strange scene was enacted at St. Mary's and the chief actor was Damont de Saint Lusson, who with fifteen men was sent up for this purpose all the way from Quebec. In the presence of a great concourse of Indians and missionaries, with his sword in one hand and a sod in the other, Saint Lusson proclaimed in a loud voice:

"In the name of the most High, Mighty and redoubted Monarch, Louis Fourteenth of that name, Most Christian King of France and of Navarre, I take possession of this place, Sainte Marie du Saut, as also of Lakes Huron and Superior, the Island of Manatoulin and all countries, rivers, lakes and streams contiguous and adjacent thereunto; both those which have been discovered, and those which may be discovered hereafter, in all their length and breadth, bounded on one side by the seas of the north and the west, and on the other by the South Sea."

27. From these accounts we see that just sixty years after the founding of Quebec the French have gained a permanent foothold within our present boundaries, about a thousand miles from that first settlement. Because of the hostility of the Iroquois, they have not come hither by the natural route of the St. Lawrence and the Great Lakes, but by way of the Ottawa have entered at our back door, so to speak, and our oldest settlements are in the bleak and barren north. The very nature of those settlements, established as they were by the missionaries, who here resumed the work interrupted by the destruction of the

Hurons, makes evident that this region was not to be a separate province of New France. These were merely the frontier posts of that French life in America centering about Quebec and Montreal, and to understand their character, we must know what is going on at that center of French-American development.

28. For half a century Champlain's little province led a feeble and struggling existence. Then the great King Louis XIV began for some reason to take an interest in Canada. After for several years contributing in various ways to its settlement, Lewis in 1665 sent over a regiment of soldiers under the Marquis de Tracy. These forced the ever hostile Iroquois to a truce, which secured a peace with these troublesome neighbors for twenty years, and allowed the operations about to begin in this upper country to go on uninterrupted. This done the soldiers were discharged and turned into colonists, and ample provisions made to give them a fair start in the world.

For the first of these provisions a feudal land system was established. Great tracts along the Sorel River, known as Seignories, were given to the officers, and these in turn granted them out in smaller tracts to the private soldiers, who thus became what are known as *habitans.* The habitan must always respond to a call for the defense of the Seignory, was subject to some slight service in labor, and had to pay a small annual rent.[1] He must give to the Seignor every eleventh fish caught in the river, bake in the Seignor's oven, and grind in the Seignor's mill, for which the toll was one-

[1] The usual grant to a habitan was a strip with a river frontage of four arpents (arpent 192 feet square) and a depth of forty; that is, a frontage of about forty-three rods and a depth of one and one-fourth miles. A typical rental was a half sou and a half pint of wheat per arpent.

fourteenth. If the holding was sold, one-twelfth of the purchase price went to the Seignor, who also had the right of holding certain courts. The houses were built on the bank of the river so that one could paddle in a canoe along the St. Lawrence and Sorel, and see every house in Canada.

Then the king sent over horses, sheep, cattle, and provision and each summer loads of girls for settlers' wives, though the supply of these never equaled the demand.[1]

29. Through the king's benevolent efforts Canada grew rapidly in population. Its government was purely despotic. The settlers had only to obey the officials set over them by the king. In religious affairs the priests had equally despotic sway. Quebec, where their mastery of the situation was complete, was as orderly and free from vices as Massachusetts in the strictest of Puritanical days. But in remoter districts the result of their efforts was different. Men accustomed to the excitement of camps could not readily settle to the monotony of a life of agriculture, and if the restrictions were too great, they could readily take to the forest. Besides the cabins on the river front were soon overflowing with children, and the sons of the soldiers as they grew to manhood were even less subject to control. The life of the natives, with its absence of morality and of the restraints of civilization, especially appealed to them. They adapted themselves quickly to native ways, and often soon came to surpass the natives in their knowledge and skill in woodcraft.

[1] Baron la Hontan sarcastically wrote of what he saw in Quebec: "These vestals were, so to speak, piled one on the other in three different halls, where the bridgrooms chose their brides as a butcher chooses his sheep out of the midst of the flock."

There thus grew up a great class of hardy bushmen, who set the fashion which most young men of Canada were anxious to follow. They were capricious in disposition and incapable of restraint, yet utterly fearless, and capable of the greatest endurance; they were rough and roistering, often cold-blooded in their cruelty, yet capable of the most generous impulses, and most chivalric actions. The fur traders soon learned the value of their accomplishments for gathering furs, and before many years they were roaming the forests in every direction for hundreds, and sometimes for more than a thousand miles.

30. When the French came to know the country we now call Michigan, they found it the greatest fur producing region on the continent. The fierce Iroquois had driven all the Indians out of our lower peninsula so that it had no fixed inhabitants. But such a great hunting ground was frequented by many tribes during the hunting season, who came mostly from the North, and the Straits of Mackinaw were thus the great gateway to the Peninsula. This same strait was the gateway to the great region beyond Lake Michigan; for Green Bay and the Fox and Wisconsin Rivers constituted the usual route to all the great territory about the upper reaches of the Mississippi. Hence Marquette's Mission of St. Ignace was really the center of an enormous fur bearing region. Thither the *coureurs de bois,* as the bushrangers were called, soon found their way, and their presence there soon changed the seat of the Indian trade from the St. Lawrence to these upper regions. Thither they brought from Montreal, by the arduous Ottawa route, canoe load after canoe load of goods, thence to be distributed to the Indians in every direction; and there were collected the furs for

which the goods were exchanged, to be loaded into canoes and paddled back to the St. Lawrence. Thus at certain seasons the coureurs de bois soon came to gather at St. Ignace by scores and by hundreds, and there were wild doings in the little town which pious zeal had founded. At other seasons the place would for a time be about deserted. The presence of these lawless daredevils in such great numbers was utterly incompatible with the work of the devoted priests, and the missionary character of the station quickly passed away. But so important did St. Ignace become that a fort was soon built, a garrison established, and a military commander placed in charge.

In the same way St. Mary's was the natural center for all the trade coming by the shores of Lake Superior. Hence it, too, became chiefly a trading post, and had its fort and its garrison. But its location was not so central as that of St. Ignace and it was never of so great importance.

31. In the summer of 1679 La Salle made his historic voyage along our shores in the Griffon, a little ship of forty-five tons. On the eleventh of August, he entered the Detroit River and Father Hennepin, who was with him, gave the name of Sainte Claire to the little lake at its head, because of the day on which they entered it.[1] The little ship, the first of its kind in all the waters above the mighty cataract, sailed on to St. Ignace and thence to Green Bay, where it was loaded with furs and sent on its return voyage. But it was never heard of again. La Salle himself went to the mouth of the St. Joseph River where he built Fort St. Joseph, and thence he went to the Illinois in his efforts to reach the Mississippi. About thirty miles up the St.

[1] July 12, 1679.

Joseph River, near where the city of Niles now stands, there was a great village of the Miami Indians, and here a missionary station called St. Joseph was soon established, then a fort and a small garrison. A little settlement grew up about the station which remained until the Revolution.

32. After a time the French were again at war with the Iroquois and at first the war was very disastrous. For three years (1691-1693) the daring New York warriors kept the Ottawa River completely blocked. But "Canada subsists only on the trade of skins," wrote La Hontan, "and three-fourths of these come from people that live around the Great Lakes." No furs reached Montreal, and the people of lower Canada were reduced to actual distress, and so impoverished as to be unable to carry on the war. It was from Michigan that relief at last came. Du Lhut with two hundred coureurs de bois, gathered at Michilimackinac, opened the river and convoyed through the three years' accumulation of skins. The province again revived, and under the able leadership of Count Frontenac, the governor of Canada, the Iroquois were thoroughly chastised and pressed back away from the routes of communication so as never again to make serious trouble. The war had demonstrated that all Canada was dependent, not only for its prosperity but even for its very existence, upon the fur trading station of Michillimackinac here in the wilds of northern Michigan.

33. Cadillac described Michilimackinac in 1695 as one of the largest villages in all Canada. Between 6,000 and 7,000 Indians now lived there; and for whites there were 60 houses "that form a street in a strait line," and there was a garrison of 200 soldiers.

The Indians were of two tribes, the Hurons and the Ottawas, the latter of whom grew corn enough to supply the whole settlement. Connected with this settlement in the seventeenth century were men whose memory is still cherished. The first is James Marquette, a noble and sincere man and devoted priest. His part in the discovery and exploration of the Mississippi has brought him lasting fame. But his real life work, brief because so arduous, was as missionary to the natives in and about our borders, to the Illinois, the Menominees, and the Chippeways of Lake Superior, as well as to those gathered at St. Ignace and St. Mary's. And then Du Lhut, the greatest leader of coureur de bois, and the Baron la Hontan, who has left us a spirited if not always a reliable account of what he saw in America, and La Mothe Cadillac, who is still to play an important part in our history, were all at various times commanders at Michillimackinac, at a time when military commanders were the only rulers.

34. The beginning of the new century brought great changes to conditions here in Michigan. Things were not altogether lovely in connection with French trade. As has been stated this trade was always a monopoly, and as a result high prices must be asked for goods sold, and low prices were paid for furs. The English were now anxious to get into the interior, and with free trade, could offer better goods at very much lower prices. Hence Canada was just now threatened with a loss of its trade altogether. For if English traders once got into this upper country, that trade would surely be gone. While La Mothe Cadillac was commander at Michilimackinac he comprehended fully the situation, and saw more clearly into the future than

any other Frenchman then in America. So he resigned and went to France, and succeeded in enlisting the king and his great minister Pontchartrain in the plan which he had conceived and now set about to carry out. His plan was to found, not a trading post, but a great settlement on the Detroit. Had his design ever been fully realized, Michigan would still be a part of Canada, and perhaps also the whole of the Old Northwest.

35. In 1701 Cadillac returned to Quebec and at once proceeded to his destination. He came to the Detroit River by way of Lake Huron and reached the present site of the city, July 24, 1701, with a hundred men, fifty soldiers, and fifty settlers. Here he built Fort Pontchartrain and was soon firmly established. The next year his wife and the wife of his captain, Tonti,[1] also came to the post, the first white women to come to Michigan.

36. Cadillac had two great purposes in connection with his settlement. One was to draw about him and establish as many of the natives as possible; and the other was to grant lands and build up a large French population. In the first of these he was entirely successful. In four years the mission of St. Ignace was abandoned for want of Indians, and the chapel was burned. St. Joseph and St. Mary's had a similar experience, all these Indians gathering about Fort Pontchartrain. Cadillac estimated that the Indian population on the Detroit was more than 8,000.

In the second of his purposes Cadillac made but slow progress. Quebec was the capital of the province, and the Jesuits were still in control of Quebec. Moreover

[1] Pierre Alphonse de Tonti, brother of the more noted Henri Tonti, the companion of La Salle.

they were hostile to Cadillac and to his settlement. At first he could not get permission to grant land, so that his first grant was not made until 1706, and was of a village lot. In four years 67 other such grants were made. During the same period there were 31 grants of farm lands, mainly up stream from the village, and 13 garden plots.[1] Corn and wheat were soon grown to supply the community. An official report shows but 63 white settlers in 1708. Horses and cattle were first brought to the colony in 1706. But this settlement grew very slowly, and until it came into the possession of the United States, it never realized Cadillac's hopes or expectations.

37. With the establishment of Detroit the importance of all the upper posts greatly diminished. For a time they sunk so low that their garrisons were withdrawn. But a few settlers still remained in them and a few traders still continued to gather. In 1714 the garrison was restored to Michilimackinac, but a new fort was built and was located on the south side of the Straits instead of the north. Charlevoix visited it in 1721 and describes it as a "sorry village" but with considerable trade. St. Joseph also in time got back its garrison. Detroit, however, became the most considerable trading post of the Northwest. But all French trade was languishing, as English goods got pretty full possession of the markets.

38. Cadillac remained at the head of his colony until 1711, and before his departure had to crush out an almost general Indian uprising. In 1712 Detroit was suddenly attacked by a band of 800 Fox warriors who had come down from St. Mary's. After severe fighting this band of Foxes was wholly destroyed. Once

[1] See *Cadillac's Village*, pp. 8-12.

after, about the middle of the century, there seems to have been some kind of attack on the place, but no record of it has come down to us. For the most part the last half century of French dominion here was a time of continuous peace.

39. During all French rule the only government of the upper posts was the government of Canada, and the fundamental laws of all the province were the ordinances of the king and the Coutume de Paris. The government of Canada was a strangely complicated and confusing one with much conflicting authority, but such as it was, none of its ordinary machinery could ever reach such remotely outlying posts as those within our borders. During most of French history the only officials here were the post commandants, who received their appointments from the governor-general, and the French government of these posts, though it seems never to have been harsh, was thus a military one. But in 1730 Robert Navarre came to Detroit as notary and subdelegate of the Intendant.[1] He was thus the first civil officer of Michigan, and of the Northwest, and to the end of French dominion this seems to have been the only civil officer in this whole region.

[1] The chief judicial officer of Canada.

CHAPTER III

MICHIGAN AND THE ENGLISH

40. REFERENCES

Original: Alexander Henry's *Travels and Adventures in Canada and Indian Territories* (1760-1766). Montreal, 1809.—*Three Years' Travels Throughout the Interior Parts of North America,* by Captain Jonathan Carver (1766-8). Boston, 1797.—*Journals of Major Robert Rogers.* Edited by F. B. Hough, Albany, 1883.—Much valuable material, easily accessible but generally poorly edited, is found in the *Michigan Pioneer and Historical Collections,* of which there are now 32 volumes. The most important for this period are: *The Gladwin Manuscripts* (Pontiac War), Vol. XXVII., pp. 605-680. *The Bouquet Papers* (Pontiac War), Vol. XIX., pp. 27-295. *The Pontiac Manuscript,*[1] Vol. VIII., pp. 266-366. And the statements obtained by Mr. C. C. Trowbridge, pp. 340-367.—*The Haldimand Papers* (Revolutionary), Vol. IX., pp. 343-658; Vol. X., pp. 210-672; Vol. XI., pp. 319-656; Vol. XII., pp. 307-315; Vol. XIX., pp. 296-675; Vol. XX., pp. 1-298. —Papers from Archives at Ottawa (post-Revolutionary), Vol. XII., pp. 1-306. Colonial Office Records (Indian War), Vol. XXIV., pp. 1-699. Colonial Office Records (Indian War), Vol. XXV., pp. 1-135. Indian Affairs (Indian War), Vol. XX., pp. 304-464. Audrain Journal (Indian War), Vol. VIII., pp. 444-447. Journal of Rev. D. Jones (Indian War), Vol. VIII., pp. 393-396. O. M. Spencer's *Account of Detroit in 1793.*

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[1] The manuscript itself is now in possession of Mr. C. M. Burton, of Detroit.

by Joseph Tasse, *Wisconsin Historical Collections,* Vol. VII., p. 123.—Roosevelt's *Winning of the West,* Vol. II., chapters I., II., III.; Vol. III, chapters I., II., VI., VII.; Vol. IV, chapters I. and II.—Sheldon's *Early History of Michigan,* chapters XVIII., XIX., XX.

41. What is known in America as the French and Indian War began in 1754. The result of this war was to decide the fate of the Continent and so of this region, but all its battles were fought east of the Alleghanies, and it does not belong especially to our history. With a few of its events, however, people of this upper country were connected. Even before the war began, in 1752, a party of 150 Indians under the lead of Charles Langlade, a French trader at Michilimackinac, came down the lakes to Ohio, surprised and destroyed the Miami town of Piqua, which had declared for the English, killed or captured eight English traders found there, and boiled and ate the Miami chief at its head. In 1755 Langlade and his Indians were at Fort Duquesne, and he was the chief leader in the terrible defeat inflicted on General Braddock. The Indians continued their activity, but only once do the whites seem to have taken any part in the struggle. In 1759 the English attacked Fort Niagara, and the settlers from all the upper posts, and also from the Illinois country, were summoned to its defense. Eleven hundred French and 200 Indians hastened down the lakes, but in the ensuing battle they were defeated and terribly cut to pieces. Those who escaped returned to their homes, quietly to await the result of the struggle.

42. On September 8, 1760, Montreal surrendered to General Amherst. All the upper forts were included in the capitulation, and Major Robert Rogers was at once despatched to take possession of them. Rogers reached Detroit November 28th, and the next day the

fort was turned over to him by Captain Belêtre, the last of the French commandants. It was too late in the season to reach Michilimackinac, and leaving a garrison under Captain Campbell, Rogers returned east. Almost a year later, in the late summer of 1761, Major Henry Gladwin, destined to be a conspicuous figure in our annals, came to Detroit with 300 troops to garrison the upper posts. While they were being distributed to Michilimackinac, St. Mary's, Green Bay and St. Joseph, Gladwin was lying dangerously sick at Detroit, and as soon as he was sufficiently recovered he returned east and thence to England. The British also established to the south of us the posts of Sandusky, Miami (Fort Wayne) and Ouatanon (on the Wabash a little below Lafayette), and reëstablished Presque Isle, le Boeuf and Venango.

43. To the stations in Michigan the half century had brought little change. St. Joseph, St. Mary's and Michilimackinac were all primarily trading posts, and the last named had regained much of its old character and importance. It was again a place where fur traders and natives gathered in great numbers, where goods were brought from below, and the furs gathered for which they were exchanged. Detroit, however, had slowly grown into a real settlement. The village proper contained 483 souls, while outside of its stockade the houses of the French "habitans," at the ends of their ribbon like farms, stood in a long row on either bank of the river, for six miles on the American and for eight on the Canadian shore, reproducing in minutest details the conditions described on the Sorel.

44. Outside the settlements named, Michigan was still an unbroken forest, but it had now many human inhabitants. The Chippeways not only occupied the

whole southern shore of Lake Superior, and had many villages in Wisconsin, but they had now also extended themselves over the whole eastern half of our Lower Peninsula. The Hurons Cadillac himself had taken to Detroit, and they were now gathered about the church at Sandwich. The Pottawatamies had replaced the Miamis in the southwestern portion of the state; and the Ottawas with their principal seat at L'Arbre Croche, had extended over the western half of the Peninsula as far south as the Ottawa River. One village of these, however, had established itself on the Detroit River, a little above the present site of Walkerville, and of this Pontiac was chief. These Indians, except the Hurons, were related tribes of Algonquins and all looked up to the Ottawa chief as their greatest leader.

45. All these Indians had been in contact with the French for about a century. Now for the first time they came in contact with the English, and the result was not pleasant. The French associated with them freely and intimately; the English despised them and kept aloof. The French pampered their whims and flattered their vanity. The English were indifferent or contemptuous. The French had propitiated them, and kept their influence over them by a lavish bestowal of presents. Now by order of General Amherst, and in spite of the protests of English officers on the frontier, presents were no longer to be given. Hence the deepest dissatisfaction with the English soon developed.

46. Pontiac of course saw and felt the changed conditions. He quickly came to realize, also, that the coming of the English meant the destruction of the natives. At the same time French traders were for their own purposes telling him stories of French armies

advancing by the St. Lawrence and Mississippi. Moved by all these things he formed the audacious plan of driving the English back to the east of the mountains, and holding the country until these armies could arrive. So he brought into combination against the English, not only the Michigan Indians, but about all those of the Northwest, together with the Senecas, and a number of Southern tribes. In May, 1763, all the forts mentioned above were suddenly attacked, all except Detroit were destroyed, and most of them were the scenes of horrible atrocities.

47. The two most important western forts were Michilimackinac and Detroit. At the former Captain Etherington, in command, was taken completely by surprise, his garrison overcome before they had a chance for resistance, and twenty-two of them slain. The rest were made prisoners and afterwards delivered up to the English at Montreal. The latter Pontiac himself undertook to capture. Major Gladwin was now again in command, having returned to America in 1762, leaving in England the young wife he had traveled so far to wed. As had been done elsewhere, Pontiac undertook to capture the fort by strategem, while the garrison was still unsuspicious of danger, and made his first attempt on the 7th of May. But Gladwin was not caught off his guard, and the wily chief was completely foiled. On the 9th the Ottawa made a second attempt and again failed. On the tenth he began a siege, the most remarkable in Indian annals, which lasted all summer. We cannot follow this determined struggle in detail, but can only recall one or two of its most striking incidents. Late in May the Indians captured at Point Pelee some barges bringing provisions to Detroit. Fifty or sixty prisoners thus fell into their

hands, and these were taken up past the fort to Pontiac's camp just above Parent's Creek,[1] where they were all tortured to death, mainly by the Indian women and children. Gladwin had a force of 120 men, and there were at times nearly 1,000 Indians opposed to him. He received small reinforcements late in June, and on the 29th of July 300 more men came, under command of Captain Dalzell. Dalzell won the reluctant consent of his commander to make a sortie against Pontiac's camp. He started before daylight on the morning of July 31, but when he was crossing the bridge at Parent's Creek, about a mile and a half above the fort, the Indians opened fire upon him from an ambush. The English were in the end obliged to retreat, and regained the fort only after five hours of desperate fighting, against a foe for the most part unseen. The brave Dalzell and seventy of his soldiers were killed and forty more wounded, with very little loss on the part of the natives.

48. There was little more fighting at Detroit. As fall approached the Indians were obliged to disperse to their hunting grounds for food, and as they were short of ammunition, a season of distress was before them. The next summer English armies too powerful for them to resist were in Michigan and Ohio, and they were forced to treaties that brought the war to an end. Thereafter the course of events was such that the English quickly adopted a different policy by which the Indians were permanently attached to their interests.

49. The treaty of Paris was signed before the close

[1] This was afterwards called Bloody Run, and passed through the grounds of the Michigan Stove Works on Jefferson avenue. The old road ran nearer the river than the present avenue.

of the Pontiac war, and all east of the Mississippi became English. Soon afterwards the king issued a proclamation establishing the Province of Quebec. The most important part of this proclamation, so far as it affected this upper country, was the clause "that no governor, or commander-in-chief of our other colonies or plantations in America do presume, for the present, and until our further pleasure be known, to grant warrants of survey or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the West or Northwest."[1] As long as this proclamation was in force, land grants could not be made in Michigan, and little or nothing could be done in the way of settlement. In 1768 and 1771, and later, General Gage, commander-in-chief of British forces in America, wrote emphatic orders to Detroit, reaffirming this policy, and declaring that all grants made by Major Gladwin or any of the British officers, or even by Captain Belêtre, the last of the French officers, were null and void.[2] Thus for about twenty years Michigan's population was nearly stationary. The whole settlement along the Detroit had 2,100 or 2,200 people, exclusive of Indians; while the other posts had very few permanent inhabitants. But if inhabitants did not increase, the fur trade did and soon reached enormous proportions. Michigan thus resumed its old place as the center of the greatest single trade in America.

50. By the king's proclamation the Province of Quebec came westward only to Lake Nipissing, and its boundary line crossed the St. Lawrence at the 45th

[1] Hinsdale, *The Old Northwest*, p. 122.

[2] *Michigan Pioneer and Historical Collections*, VIII., 468; X., 245.

parallel. All the country farther west was without the jurisdiction of any organized civil government, and thus even worse off than under French dominion. Towards the close of this anomalous period commissions were issued to justices of the peace. But under English law justices of the peace could not try cases. They could examine and bind criminals over to competent tribunals, but even this was manifestly impossible for places outside the limits of any province and so of the jurisdiction of any court. Thus debts up here could not be collected; disputes could only be settled by arbitration, which the parties could consent to or not as they pleased; and the only real rule was that of military commanders, which, with all its shortcomings, was never seriously oppressive or extortionate.

51. In 1774, by the passage of the Quebec act, all the Northwest was made a part of the province of Quebec, and Michigan again came within the pale of civil authority. This was not, as has been represented by American writers, a violent wrenching of this region, for political reasons, from the colonies immediately to the east of it, but as far as Michigan is concerned, was simply restoring it to its geographical and historical relation. The Ottawa and the lakes and the St. Lawrence were still its natural routes of communication with the east. All its trade was still with Montreal, and Quebec, now again, as it had always before been, was its political capital. The relief, however, which the promoters of this measure hoped for was nominal rather than real. No courts were established here and those at Montreal were evidently too far away to be of any use. All the old conditions thus still obtained.

52. But one change was made which might have

been of importance had it lasted. In 1775 Henry Hamilton was sent to Detroit with the title of lieutenant governor. He reached his post November 9, and was the first civil executive officer in this whole region. Under Hamilton's administration civil processes in Michigan had a rather unpropitious beginning. Several persons accused of petty crimes were tried by one Philip Dejean, who claimed to be a justice of the peace, in spite of the fact that justices of the peace had no right to hold trials, and on conviction were sentenced to be hung, a sentence which the lieutenant governor executed. Hamilton's unscrupulous disposition manifested itself in other ways. He was a bitter partisan, cruel and over-anxious to anticipate and carry out the policy of his superiors. In 1776 he proposed the use of Indians in the Revolutionary War, and in 1777, he received this order from Lord George Germain: "It is the King's will that Governor Hamilton assemble so many of the Indians of his district as he conveniently can" and "Employ them in making a diversion, and exciting an alarm upon the frontiers of Virginia and Pennsylvania."[1] In the single summer of 1777 Hamilton boasts of having sent out fifteen parties of Indians to raid the border settlements; he paid a bounty for scalps, and for a time a higher bounty than for prisoners, and in a room within the palisades of Detroit he collected hundreds of these ghastly trophies, few of which were taken in battle, and more than half of which were cut from the heads of defenseless women and children.[2]

[1] *Michigan Pioneer and Historical Collections*, IX., 344, 347.

[2] In the spring of 1778 a party of Indians, led by Charles Beaubien of Detroit, captured Daniel Boone and twenty-six of his people. Beaubien would allow no murdering. Boone

53. Hamilton's great zeal provoked retaliation on the part of the Kentuckians, for Kentucky was then the Virginia frontier, with results he had not anticipated. In the summer of 1778 a band of them under George Rogers Clarke captured the whole of the Illinois country, and wished to take Detroit. The result was the building of a better fort at Detroit, named Fort Lernoult, and Hamilton at once set about raising forces to recover the lost country. He reached Vincennes about the middle of December and the place was at once surrendered to him on condition that the garrison be permitted to march away. We can still laugh at Hamilton's boastful message that Vincennes was recovered to the British without a shot being fired, or a man injured or any property destroyed, when we remember that the garrison consisted of Captain Helm and one soldier. On Feb. 23, 1779, General Clarke reappeared before Vincennes and captured Hamilton and his whole force. A few days later Dejean was captured on his way to join his chief. Both were sent as prisoners to Virginia, where they were treated harshly because of their activity in connection with the Indians. Neither of them ever returned to Detroit. Many other Indian expeditions were undertaken against the Kentucky frontier, but most of them did not start from Detroit. The Americans were not again molested in their possession of Illinois.

54. Just before the outbreak of the Revolution Major Robert Rogers was in command at Michilimackinac. But he became engaged in some treasonable plot or other and was removed in disgrace. He was succeeded by Major Arent Schuyler De Peyster, a relative of the

reported that the Kentucky settlers were so constantly harassed that crops could not be sown or gathered.

Schuylers of New York. In 1779 De Peyster was ordered to Detroit and was succeeded by Captain Pat Sinclair. Sinclair removed the fort to Mackinaw Island, where it has ever since remained, and General Haldimand, the commander-in-chief in Canada, gave it the new name Mackinac. Sinclair nearly destroyed St. Mary's by breaking up its trade, and he sent a detachment to St. Joseph and removed all its inhabitants. This little settlement, which in the isolation of its deep forest setting had existed for a century without external support, never seems to have been resumed. Sinclair seems also to have attempted frauds in connection with the Indian supplies, which ultimately worked his ruin. One of his successors is also said to have made a great deal of money at Mackinaw.

55. These brief accounts are sufficient to indicate something of the character of Michigan History during the Revolution. None of the battles of that war were fought within our borders, but Detroit was the center from which most of the western expeditions started and to which they returned. The number of troops in this region was never large. At the beginning there were a little over 100 at Detroit and half as many at Mackinaw. The largest return was in December, 1782, when the figures were 510 and 121 respectively. But the expenditures were entirely out of proportion to the number of troops. De Peyster distributed 17,000 gallons of rum to the Indians at Detroit in one year, and within a like period drew on the Military Chest at Quebec for £138,000 for Indian supplies alone. The expenses at Mackinac were still higher, but this was due to the peculiar operations of Captain Sinclair.

56. In 1782 orders came to Michigan to cease hos-

tilities and the next year came knowledge of the treaty of peace. It was a matter of great surprise and chagrin to the English in this upper country when they found that the boundary line was to be the Mississippi and the Great Lakes, for it meant that the two most important western posts were ceded to the Americans. All the English officers in Canada bitterly opposed giving up any posts held by British troops on the American side of the boundary, and when in 1783, Washington sent Baron Steuben to arrange for their transfer, General Haldimand refused to consider the matter or to allow the Baron to visit them. A course in direct contravention of the articles of the treaty, entered upon at first with hesitation, soon became their fixed policy, and the result was Michigan for years to come remained the frontier possession of Great Britain, and its real future was in serious doubt.

57. The close of the war brought considerable change to the region of which we are a part. Great numbers of tories, fugitives from the states, sought refuge at Detroit. These must be provided for, and as early as 1780 General Haldimand decided to allow grants of land. When the boundary line was established, most of these people went to the Canadian side. But it happened at about the same time that French immigrants began to come through Canada to Michigan. They settled both above and below Detroit and by 1784 both banks of the river were taken up, and mostly occupied, from Lake Erie to Lake Huron. Then they began to overflow into the valley of the River Raisin. Much of our French population came to us during this period, and there was thus a substantial increase in the number of our people during the years of illegal English occupation. In 1788 Lord

Dorchester, then Governor-General of Canada, issued a proclamation dividing Canada up into districts. The westernmost was called Hesse and it extended west from a north and south line through Long Point on Lake Erie. Two courts were now established at Detroit, a court of common pleas of three justices, a court of record with extensive jurisdiction, and a justice of the peace court of eight justices, with a clerk, a sheriff, and a coroner. In 1791 the Province of Quebec was divided into the two provinces of Upper and Lower Canada. John Graves Simcoe was placed at the head of the upper province with the title of lieutenant governor, with his capital at Navy Hall, opposite Niagara. From this time on civil government seems to have been administered in Michigan in common with the rest of Upper Canada, but this coming of civil administration for our state had lagged a century and a quarter behind the formation of our original settlements.

58. The treaty of peace of 1783 did not settle all the difficulties of the American Government, and one class of these especially involved this upper country. The Indians were not satisfied with the treaty and not willing to cease hostilities. At first the British officers, and especially De Peyster, labored conscientiously to hold them under restraint, and for a short time their depredations about ceased. But when in July, 1783, two commissioners from the United States, "both genteel men," De Peyster wrote in evident surprise, came to Detroit to negotiate treaties, he refused to allow them to have any direct communication with the Indians. Instead, he forwarded them to his superior officer at Niagara, whence they were sent home. From this time on English officials tried to maintain the policy

of not allowing the United States to deal with the Indians except through them. Of course the Americans would resent such an attempt and our Indian difficulties were greatly increased.

59. The Indians to be dealt with were the Iroquois of New York, the Hurons (also called Wiandots) now in Michigan and Ohio, and the Algonquin tribes of the whole Northwest. All these now felt what Pontiac had so clearly seen twenty years before. The advance of the American settlements meant their destruction, and their problem was to check that advance. Among them again a great leader arose, Joseph Brant, a Mohawk chief, highly educated, and of great ability. He adopted again Pontiac's plan, to bring all the Indians between New York and the Mississippi into one great confederation. In this for a time he partially succeeded. What may be considered the first meeting of this confederation was held at the mouth of the Detroit River in the fall of 1786. Twelve or fifteen tribes were represented at this great council, and it adopted a letter, apparently meant to be sent to the United States government, asking that no land be taken by Americans except by agreement with all the confederates, and until such agreement, that no settlers be allowed to cross the Ohio.

60. This action of the great council undoubtedly expressed the sincere wish of all the Indians, but it was a wish to which the United States paid no heed. Both before and afterwards treaties were made with various tribes. These the general Indian councils invariably rejected, and the very tribes making them would afterwards repudiate. The first treaty in which we are especially interested was made at Fort McIntosh[1] in

[1] At the mouth of Beaver River in Pennsylvania.

1785, with four tribes, the Delawares, the Wiandots (Hurons), the Chippeways and Ottawas. It granted the southern half of Ohio to the United States, as also a strip six miles wide along Lake Erie and the Detroit River from the River Raisin to Lake St. Clair, and 120 square miles at Mackinaw. No Indians ever observed this treaty and in 1789 it was renewed at Fort Harmar, opposite Marietta, by General Arthur St. Clair, then governor of the newly organized Northwest Territory. The result was no better and a different method of settlement was sought.

61. Within a year or so after the close of the Revolutionary War hostilities were renewed, and during all this period the border settlements were subject to all the horrors attendant on Indian incursions. It is on record that more than 1,500 Kentuckians were either killed or carried into captivity. With the inauguration of the new government of the United States under the Constitution, a more vigorous policy was at once begun. In 1789 General Harmar invaded the Indian country of Ohio with a force of 1,500 men. But he was surprised and defeated and driven back. A new army was at once raised and placed under command of General Arthur St. Clair. St. Clair moved up the valley of the Great Miami in 1791 with over 2,000 men. But while crossing to the Maumee he was surprised and defeated by a force of only 1,040 Indians, and so terribly cut to pieces, for he lost over half his men,[1] that this is one of the bloodiest Indian battles in our history.

62. The American government at once set to work to raise a new army, and while this was being done, President Washington made one more attempt to settle the difficulties by treaties. After various negotiations,

[1] The Indians tomahawked and scalped all prisoners.

it was finally arranged to send commissioners to a great council of Indians to be held on the Maumee in the summer of 1793. The commissioners were General Benjamin Lincoln, of Revolutionary fame, Colonel Timothy Pickering and Beverly Randoph. They got as far as Amherstburg on their way to the Maumee, when they were met by a demand from the Indians that as a preliminary to any treaty the Ohio be fixed upon as the boundary between the Indians and the United States. But the commission would not and could not agree to this, as there were already many settlements north of the Ohio, no conference was ever held, and no further attempt at a peaceable settlement made.

63. During all this period the English had not been entirely quiet. They had agents everywhere among the Indians, some of the most important being familiar figures in Detroit. Such were Colonel Alexander McKee, a man of character and influence, Captain Matthew Eliot, and the infamous Simon Girty. The Indians were helped to formulate their demands and urged to make a stand. The danger of American encroachments was greatly exaggerated, and American demands and proposals were misrepresented or misinterpreted. Arms, ammunition and provisions were furnished in abundance, with plenty of implications of even more substantial aid. Among the higher officials the spirit was not different. When Lieutenant Governor Simcoe reached his province he was especially bitter against the ever advancing Americans, and urged upon his superiors the most violent measures to repel them. The wealthy fur traders of Montreal were also active and urged upon Great Britain the necessity of keeping the whole of the northwest territory for the

sake of their trade,[1] thus succeeding to the old French idea of making of this vast region a great preserve for wild animals. But the most astonishing proposition came from Lord Dorchester, Governor-General of Canada. It was that a great Indian country be established to extend all along between the boundary of the United States and that of Canada. The northern boundary was to be the line established by the treaty of Paris; the southern the Ohio, the Muskingum and Tuscarawas to Fort Laurens, thence a straight line to Venango and so on east. Neither nation was to allow whites to settle in this region, and Detroit and Mackinaw were to be razed and their inhabitants provided for elsewhere. His lordship fondly concluded that "The wisdom and utility of this system, I should hope, would be so evident to the good sense of the United States, as to conquer every difficulty on their part,"[2] and an attempt was actually made to induce Washington's administration to accept it.

64. Meantime a new army was in the field and placed under the command of General Anthony Wayne. With the failure of the Maumee conference Wayne began his advance up the Great Miami. He moved slowly and cautiously and spent the winter in the great fortified camp of Greenville. The next spring (1794) Governor Simcoe, acting under orders, sent a force from Detroit to the Rapids of the Maumee where they built a fort called Fort Miami, a movement that constituted an open act of war against the United States. But Wayne's inevitable advance had again

[1] They urged their government to negotiate a new treaty and procure a new boundary line, suggesting several that would do, the first being the Muskingum and the Ohio.

[2] *Michigan Pioneer and Historical Collections,* XXIV., 388.

begun, and at a place called Fallen Timbers, a little above Fort Miami, the Indians made their stand against him. A bloody battle was fought, and they were terribly defeated. By this battle their power was broken. The next summer, 1795, the great confederation again assembled, this time at Greenville, where they made a treaty with General Wayne,[1] which put an end to the troubles until the war of 1812. This treaty confirmed all the grants made by the treaties of Fort McIntosh and Fort Harmar, and made some additional ones. In Michigan the Indians again gave up their right to the six mile strip along the Detroit, but the Mackinaw grant was changed some. All the island was given up, together with all on the mainland that had previously been given to the French or the English, and a tract three miles deep with a frontage of six miles on the north side of the strait.

65. General Wayne's victorious army did not move at once on Detroit as the British had feared it would. But Washington had sent John Jay to England to try to compose the difficulties between the two countries without resort to war. In this he was successful and in the treaty that he negotiated, Great Britain again stipulated to remove her garrisons from American posts, and all were to be given up by the first of June, 1796. Near the battlefield of Fallen Timbers Fort Deposit had been erected and here in the summer of 1796 Lieutenant Colonel John F. Hamtramck was in command. When he received the necessary orders he moved down and took possession of Fort Miami and despatched Captain Moses Porter to Detroit with a force of sixty-five men. Porter reached Detroit July

[1] Wayne's treaty is found in *Michigan Pioneer and Historical Collections*, Vol. XX., p. 410.

11, 1796. The British flag which had first been raised there by Major Rogers thirty-six years before, was hauled down at noon, and the fort turned over to the American captain. The American flag was at once run up and this was the first time it had ever waved within either of our two peninsulas. Coloned Hamtramck reached Detroit a few days later, and Mackinaw was turned over early in August. Michigan was at last torn from Canada, and it was now decided that it should be a part of the American nation. General Wayne came to Detroit on the 13th of August. He stayed until the 17th of November. On his way back across Lake Erie he was attacked with gout, and died at Presque Isle, Dec. 15, 1796.

CHAPTER IV

MICHIGAN AS A COLONY

Governor Hull

66. References

Original: *Laws of Northwest Territory,* four small volumes: Vol. I., Philadelphia, 1792; Vol. II., Philadelphia, 1794; Vol. III., Cincinnati, 1796; Vol. IV., Cincinnati, 1798.—*Laws of General Assembly of Northwest Territory,* three volumes: Vol. I., Cincinnati, 1800; Vol. II., Chillicothe, 1801; Vol. III., Chillicothe, 1802.—*Territorial Laws of Michigan,* four volumes, published by the state.—*Michigan Pioneer and Historical Collections:* Indian Affairs, Vol. XX., pp. 300 to end. Papers from Archives at Ottawa (War 1812), Vol. XV., pp. 1-687. Papers from Archives at Ottawa, Vol. XVI., pp. 1-413. Many miscellaneous documents in Vol. VIII., pp. 449 to end.—*Travels Through the States of North America and the Provinces of Upper and Lower Canada,* by Isaac Weld, Jr., London, 1800, Vol. II., Letters XXXIII. and XXXIV.

Secondary: Lanman's *History of Michigan,* chapters IX.-XI.—*Historical and Scientific Sketches,* Paper III.—Campbell's *Political History,* chapters IX.-XII.—Cooley's *Michigan,* chapters VII.-IX.—Hinsdale's *Old Northwest,* chapters XI.-XVI.—Sheldon's *Early History of Michigan,* chapters XX.-XXI.

67. The military story of Michigan is for the time being done. Its civil story begins at once. For Michigan is a part of the Northwest Territory, and so a part of the region for which the Ordinance of 1787 was especially prepared. Hence as the American flag began to float over our stations, the inhabitants here came under the jurisdiction of Governor St. Clair. On the fifteenth of August, 1796, during the temporary absence of the governor from the territory, the secre-

tary, Winthrop Sargeant, issued a proclamation: "I do ordain and order that all and singular lands lying and being within the following boundaries . . . . shall be a county named and henceforth to be styled the County of Wayne,"[1] thus creating a civil organization for the newly acquired region and giving it its first name. Wayne County as thus established extended eastward to the Cuyahoga and Tuscarawas Rivers. Its southern boundary from Fort Laurens to Fort Wayne was very nearly the line established by the treaty of Greenville. From Fort Wayne the boundary ran in a straight line to the most southern part of Lake Michigan and "Thence along the western shore of the same to the northwest part thereof (including the lands on the streams emptying into the said lake), thence by a due north line to the territorial boundary in Lake Superior," and so back to the place of beginning.

68. Mr. Sargeant at once visited Detroit and Mackinaw to establish civil authority. At Detroit, which was made the county seat, he established the Court of Common Pleas, modeled after the Canadian court that had preceded it. There were five judges and they were business men and not lawyers. For the whole Northwest Territory there was, of course, under the Ordinance of 1787, a court of three judges appointed by the president. Hitherto this had been accustomed to sit in four places, Marietta, Cincinnati, Vincennes, and Kaskaskia. Detroit was now added to the circuit.[2] This court could revise the decisions of the lower courts, but from its own decisions there was no appeal.

[1] Found in *Michigan Pioneer and Historical Collections*, VIII., p. 496.

[2] See, however, memorial to Congress from inhabitants of Wayne County, *Michigan Pioneer and Historical Collections*, VIII., p. 512.

69. The region we call Michigan was now fairly under American dominion. American institutions had been set up, and American officials were in control. But let us not for a moment suppose the settlements here were really American. "The traveler may fancy for a moment, if he pleases, that he has been wafted by enchantment back again to the neighborhood of Montreal or Three Rivers," wrote a genial visitor in 1796. All the years of English occupation had not been sufficient to change the peculiar characteristic of this old French settlement. More than two-thirds of our people were still French. French was the prevailing language. The old houses, the methods of laying out and cultivating the farms, the old orchards and gardens were still the same as characterized French Canadian settlements everywhere. In one respect Michigan was unique. The mills used here for grinding grain were windmills. At every point of vantage could be seen these wooden tower-shaped structures, built on sloping stone foundations, their long white arms revolving in the wind. Detroit was our only considerable village. It had now some 1,600 to 1,700 inhabitants. The stockade still surrounded it. Its six or eight streets were only from twelve to twenty feet in width and were very dirty, and its sidewalks were single logs a foot in diameter, laid in the ground and squared on the upper side. There was not a wagon in the town, the largest vehicles being carts, each of which could be drawn by one little French pony.

70. The fur trade, of course, was still the great business of this country, and was still entirely with Montreal. But the American traders now came in and their competition was dangerous. The great

Montreal trading houses accordingly took vigorous measures to preserve their trade. To do this they hit upon an expedient that is supposed to be quite modern. They formed a "trust," or, in other words, they all united into one great company, which they called the Northwest Company, and so successful were their methods that for a long time to come furs continued to go to Montreal almost as exclusively as before. Detroit and Mackinaw were at once made ports of entry, and the result was the duties under the Hamilton tariff collected here in these frontier posts constituted no inconsiderable contribution to the revenues of the central government.[1]

71. When Michigan was added to the Northwest Territory, the government was still in the first stage as provided in the Ordinance of 1787.[2] In 1798 the territory was prepared to pass to the second stage,[3] and the first legislative body accordingly assembled at Cincinnati, September 24, 1799. In age, Ohio had just passed its first decade, and Michigan was a century and a quarter. But Wayne was one out of the nine counties represented in this legislature and sent three out of the twenty-two delegates. Wayne's delegates were all from Detroit and were elected by a *viva voce* vote.

72. This legislature at Cincinnati sent as the first delegate of the Northwest Territory to Congress, William Henry Harrison, and at the very first session he attended, a bill was introduced to divide the Territory. The bill became a law in 1800. The dividing

[1] For example, the total customs receipts at Mackinaw for the quarter ending June 30, 1805, were $29,677.60.

[2] See Appendix I. §§ 3-9.

[3] *Ordinance*, § 9.

line was to run from the mouth of the Kentucky River to Fort Recovery[1] and thence due north to the national boundary. All east of this line retained the name of the Northwest Territory, and Chillicothe was made its capital. All west of it became the territory of Indiana with its capital at Vincennes. The great peninsula between the lakes for which there was still no name, and whose geographic unity was seemingly still unrecognized, was thus about equally divided between the two territories. But in the western portion of the peninsula there were no civilized inhabitants, and so Wayne County of the Northwest Territory, though cut in two in the middle, really lost no population. Moreover as their political connections were still with the settlements about the Ohio, the change made no material difference to the people of Detroit and Mackinaw.

73. As early as 1798 "the inhabitants of the town of Detroit" petitioned "the Honorable Justices of the Territory of the United States Northwest of the Ohio River"[2] for incorporation under a law which had been enacted on the first of July of that year. At the time nothing seems to have come of the movement. But in 1802, at a session of the legislature held at Chillicothe, an act was passed incorporating the town under a board of trustees.[3] The chief use the town made of its new prerogative was to take measures for protection against fires, and for the prevention of the use of its streets as bowling allies.

[1] Fort Recovery was built by General Wayne on St. Clair's battlefield, in the southern part of what is now Mercer County, Ohio, very near the Indiana boundary.

[2] The petition is found in *Michigan Pioneer and Historical Collections,* Vol. VIII., p. 507.

[3] See *Laws of Northwest Territory for 1801,* p. 200.

74. In 1802 a bill was passed by Congress making Ohio a state of the Union. Its western and northern boundaries were the meridian passing through the mouth of the great Miami, and the parallel through the southernmost point of Lake Michigan.[1] All west and north of these lines was attached to the Territory of Indiana of which W. H. Harrison was governor. In January, 1803, Governor Harrison issued a proclamation[2] establishing Wayne County of Indiana. Its southern boundary was the parallel above mentioned, its western the meridian running through the westernmost extension of Lake Michigan; in other directions it extended to the national boundary line.

75. In the arrangement by which Wayne County became a part of Indiana Territory the inhabitants were not consulted, their interests not considered. The people of Detroit were now roused to action and at once petitioned Congress asking that either Wayne County be made a separate territory, or else that the capital of Indiana be moved from Vincennes to Detroit. This petition was virtually answered by a bill approved January 11, 1805, in which it was enacted "that from and after the 30th day of June next all that part of Indiana Territory which lies north of a line drawn east from the southerly bend or extreme of Lake Michigan until it shall intersect Lake Erie, and east of a line drawn from the said southerly bend through the middle of said lake to its northern extremity, and thence due north to the northern boundary of the United States, shall, for the purposes of temporary government, constitute a separate territory and be called *Michigan.*"

[1] See *Ordinance* of 1787, Art. V.

[2] Found in *Michigan Pioneer and Historical Collections*, VIII., 540.

Although Michigan is thus less than Wayne County of Indiana, yet the logic of our geography has at last asserted itself, our beautiful peninsula has become a political unit, and nearly two centuries after Europeans first beheld it, has acquired the name which it is henceforth to bear.

76. When our separate existence thus began, Michigan had a population of less than four thousand souls.[1] Its government would be according to the Ordinance of 1787, and hence would be in the first stage.[2] The people were not represented and had no voice in their own control. Yet this government, purely despotic in principle, was to continue unchanged for almost a generation.

77. In 1805 Thomas Jefferson was president of the United States. Upon him, therefore, would devolve the appointment of our first officials, and hence he held in his hands great power of good or evil over our Territory. Good officials would mean peace and prosperity and could contribute much to our development. The appointments actually made were very unfortunate. The person selected for governor was William Hull, a man lacking in force of character, and not at all well fitted to understand or to deal with frontier conditions. Stanley Griswold was appointed secretary, and Augustus B. Woodward, Frederick Bates and John Griffin were the judges.

78. When these officials, who except Judges Bates were all non-resident, reached Detroit, the capital of the territory and only considerable settlement, "They

[1] By Census of 1800, 3,206; by that of 1810, 4,762. This, of course, does not count Indians.

[2] As the *Ordinance of 1787* is our first fundamental law it should be carefully studied. A history of it may be found in Hinsdale's *Old Northwest*, chapter XV.

found a very sad state of affairs." For on the 11th of June Detroit had burned. Every building in the town except a warehouse and a log bakery had been destroyed. The people were scattered among the farm houses round about, or staying with friends in Canada, or living in tents on lands adjoining the site of the town. The new government was organized on July 2, and its first work was necessarily to adopt measures to relieve the distress of the people. Temporary measures only were adopted, as it was decided to lay careful and far reaching plans before reconstructing the town.

79. As soon as possible the governor and judges addressed themselves to the organization of their territory. The governor divided the territory into three districts,[1] that of Erie south of the Huron river, that of Detroit from the Huron River to Lake Huron, and that of Michilimackinac embracing all farther north. For each one of these districts a court was provided to be presided over by one of the territorial judges. Justices of the peace courts were also established, which were the courts for small causes (civil limit $20.00, criminal, fines of $7.00). The district courts had civil jurisdiction over cases between $20.00 and $200.00 and a criminal jurisdiction extending to all cases not involving capital punishment. From both these courts there was the right of appeal in all cases to the regular Territorial Court. The governor and judges together were to adopt laws for the territory,[2] and were called the legislative council. For three months this council worked steadily on a code of laws which has ever since been known as the "Woodward Code." A slight examination of the laws of this code will show how

[1] See *Ordinance of 1787*, § 7, for his authority to do this.
[2] See *Ordinance of 1787*, § 5.

far the beginning of the Nineteenth Century differed in spirit and tone from the end. Thus the law for the recovery of debts under $20.00 provided that "if sufficient property cannot be found" "the officer take the body of the person against whom such execution shall be granted."[1] The prisoner might by a process lasting at least thirty days get himself released.[2] Ferrymen, tavernkeepers, and all retail merchants had to pay a license of from $10.00 to $30.00.[3] Then taxes were not levied, as is now generally the case, on property in proportion to its value. The first tax law read: "There shall be a tax on every coach, chariot, phaeton, chaise, calash, chair, or other riding carriage of one dollar for every wheel, and on every sleigh, carriole, or other carriage for riding in the winter of $2.00." "On every horse, mare, colt or mule, of thirty cents." "The owner of every dog . . . . shall pay a tax for the same of fifty cents, and if more than one dog be so kept, for the second dog, of one dollar, and for every dog above the number of two, one dollar and fifty cents."[4] Later a poll tax of one dollar on "Every male inhabitant above sixteen years" was substituted for the tax on "Every horse, mare, etc."[5] "For the encouragement of literature, and the improvement of the city of Detroit"[6] a law was enacted directing the governor to raise $20,000 by four successive lotteries of $5,000 each. The criminal code enacted only twenty-five years after Dejean's terrible sentences made but two offenses capital, murder and treason, expressing in the

[1] I *Territorial Laws*, p. 23.
[2] *Ibid.*, p. 83.
[3] *Ibid.*, p. 40.
[4] *Ibid.*, p. 69.
[5] *Ibid.*, p. 80.
[6] *Ibid.*, p. 67.

most striking way the difference between an aristocratic and a democratic government. Yet the whipping-post was used and not abolished for more than a quarter of a century; prisoners working with ball and chain were not an infrequent sight, and the keep of the poor was struck off at public auction to the lowest bidder.[1]

80. During the winter of 1805 and 1806 both Governor Hull and Judge Woodward were in Washington to try to procure needed legislation for their territory. Accordingly in April, 1806, a law was passed authorizing the governor and judges to lay out a new town of Detroit, and appropriating 10,000 acres of land for the use of the town. The governor and judges at once proceeded to discharge their new task. They enacted "that the town of Detroit . . . . shall be a city, and the government thereof as such shall be vested in a mayor, to hold his office one year, and be appointed and commissioned by the governor, and a city council which shall consist of two chambers," of three members each, elected annually in September and March respectively. In laying out their new city the governor and judges disregarded wholly the streets of the old town, and adopted a plan with broad and radiating avenues, according to which the city is still mainly built, and which contributes largely to make it one of the most attractive cities in the Union.

81. Another subject upon which the governor and judges successfully sought legislation was that of lands. Titles here were in the utmost confusion. During English occupation very few titles were legally granted, yet there was considerable increase of population. Most of the valid titles must go back to the French, but,

[1] I *Territorial Laws*, p. 90.

contrary to the direct stipulation of the treaty of peace, General Haldimand at the close of the Revolutionary War, had ordered the records carried to Quebec, and they were not returned.[1] Hence few even of the old titles could be substantiated. The confusion was further increased by the acts of rapacious speculators, among whom were some of the most prominent Detroit merchants. When, after Jay's treaty, it was certain that Michigan would be given up by the British, they bought Indian titles to enormous tracts which they afterwards tried to make good, though under laws of the United States such titles were worthless. Many tracts were actually held, nevertheless, and sold out to actual settlers by whom they were occupied. One ambitious lot of scoundrels, who retired to Canada when Detroit passed to the Americans, sought to bribe Congress to grant them the title to the whole of our lower peninsula.[2] The United States opened its first land office in Michigan in 1804. The register and receiver were constituted a board to examine claims, and although by actual count there were known to be 442 farms in Michigan, outside of the town of Detroit this board found but six valid titles.[3]

82. This condition led the people of Michigan through their militia officers to address a memorial to the president asking for liberal treatment with

[1] The records seem to have been taken away and then returned and taken away again in 1796. They are now back in Detroit, having been returned about 1860. At least three volumes of them are back. There is some reason for thinking that there may have been other volumes which have not yet come to light.

[2] See article by Judge J. V. Campbell, *Michigan Pioneer and Historical Collections,* Vol. VIII., p. 406.

[3] The Report of the Commissioners is found in *American State Papers, Public Lands,* Vol. I., p. 266.

regard to land titles, and that land be obtained from the Indians and put on the market. These requests were in part answered by a law of Congress in 1807. To each person or his heirs who possessed or occupied lands on the 1st of July, 1796, was granted a title to such lands, not exceeding 640 acres. In the same year Governor Hull[1] entered into a new treaty with the Ottawas, Chippeways, Wiandottes, and Pottawatamies by which he extinguished the Indian title to the whole southeastern portion of the territory. For the western boundary of the tract the parties fixed upon the meridian running through the mouth of the Auglaize River, now our principal meridian. Its northwest corner was a point on this line due west of where Fort Gratiot was afterwards built, and thence the boundary line ran northeasterly to White Rock in Lake Huron. Though the United States thus acquired full title to many thousand acres, it made no surveys and put no lands on the markets, and so lands could not be legally obtained by new settlers.

83. During all this early period of our territorial history, there was an unfortunate quarrel between Governor Hull and Judge Woodward. Into the details of this we cannot enter. The two men were utterly incompatible, and as against the governor's lack of force, Judge Woodward was overbearing and aggressive, and often arbitrary and unscrupulous in the methods he adopted. Things went so far that both parties fell into disrepute, their influence was destroyed, and the interests of the territory were seriously interfered with. In fact largely as a result of the character of these officials, this whole period is one without material or political progress, and to the weakness of

[1] Governor Hull was Indian Agent for the United States.

the governor is due the further fact, as we have now to see, that the period ended in the most terrible catastrophe this region has ever experienced.

84. During the period preceding the battle of Fallen Timbers, the English had maintained the closest relations with all the Indians in the Northwest, and the resistance the Indians had hitherto been able to make had been almost entirely due to the British aid in the form of arms and provisions. After the treaty of Greenville and the surrender of the border posts, one would naturally suppose that the old relations of the English with the Indians on American soil would come to an end, if not voluntarily on their part, then on the insistence of the United States. But instead British presents were lavished as freely as ever, and every year Indians went in great numbers to Malden or Drummond's Island, whither the garrisons from Detroit and Mackinac had been removed, to renew their friendship and to receive the rewards in store for them. Moreover, Indian agents and English fur traders were everywhere, and English influence over the Indians was as complete as ever. This policy, so manifestly dangerous to us, the United States government allowed to go on absolutely unchecked, and apparently unheeded. The full fruitage of this blind folly was now to be gathered, and Michigan was destined to be the main sufferer.

85. As early as 1807 Governor Hull began to have great anxiety for the safety of his colony. Everyone expected that there would be another war with England, and the population of the portion of Canada immediately opposite us was ten times our own. Then a great leader again arose among the Indians. This was Tecumseh, a chief in a Shawanoe tribe living

along Tippecanoe Creek. Tecumseh regarded the steadily advancing American settlements as a "mighty water," ready to overflow his people. He wished to erect a dam "to resist this mighty water," and to do this, as Pontiac and Brant had tried, by forming a great Indian confederacy. But unfortunately for the patriotic red man, Governor Harrison was keenly watching the movement, and before the Shawanoe's plans were completed, an outbreak occurred that brought the pale-faced warrior down upon him. The battle of Tippecanoe was fought November 7, 1811, and Tecumseh was hopelessly crushed. The chief himself fled to the British at Malden, where he was warmly received and made a general in the British army.

86. In the winter of 1811-1812 Governor Hull was in Washington. The evident danger of this frontier territory determined the administration to send hither a considerable body of troops. These were to be raised in Ohio and Governor Hull was made commander. He assumed command of his troops at Dayton, May 25, 1812, and soon set out for Detroit with a force of something over 2,000 men. He was at the Maumee on June 30, whence he sent provisions and his papers to Detroit by boat, while he with his army continued their march to the Raisin Valley. War had been declared against England twelve days before, but with incredible neglect, Hull, who should have known of the declaration by June 24, had not been informed. He heard of it, however, on the 2d of July when he had reached the Raisin River. The English, however, had been more prompt, and so Hull's boat was captured at Malden, and from his papers they got fullest informa-

tion. General Hull with his army reached Detroit June 5 and went into camp at Springwells.

87. Meanwhile, the administration at Washington had been equally negligent with regard to the only other Michigan post. No pains were taken to inform Lieutenant Porter Hanks, in command at Mackinac. General Hull, however, was equally negligent. For after he learned that war existed, prompt action would have notified Hanks in ample time. As it was the first intimation the lieutenant had that war had begun was on the morning of July 17, when he was summoned to surrender by an overwhelming British force. Mackinac thus fell and Hanks and his garrison of fifty-seven men were permitted to retire to Detroit. This surrender, but the beginning of our serious calamities, was exceedingly unfortunate, as the Indians, who before had hesitated, now began to join the British in great numbers, and Mackinac was by far the most advantageous place for dealing with them. Hostile Indians were accordingly lurking in the woods everywhere, before proper arrangements could be made for the defense of the scattered settlements in the lower part of the territory.

88. On the 9th of July, General Hull received orders to invade Canada, and a day or two later he reluctantly crossed the river and took up a position at Sandwich. The inhabitants of this part of Canada were friends and relatives of those on the American side, and so in no sympathy with the war. They refused to answer the summons of General Brock, the British commander in upper Canada, and sometimes refused to obey him. The actual forces under Brock's command amounted to but a few hundred. The only British stronghold near Michigan was at Malden.

Had Hull moved promptly from Sandwich, he could easily have captured the place, and there would have been no enemy anywhere near him. But he hesitated and delayed while the forces at Malden slowly increased, until on the 7th of August, although the golden opportunity for victory had not yet passed, he ordered a retreat and returned with his forces to Detroit.

89. Just before this movement, General Hull had learned of provisions coming from Ohio, and sent Major Van Horn from Detroit to meet them. But the British crossing the river intercepted Van Horn and drove him back. The most serious part of this disaster was that Hull's mail was captured and from reading his letters General Brock took the measure of his man, and decided upon his course of action accordingly.

On August 8, Colonel Miller was sent to open the way to the Raisin. At Monguagon Miller defeated the force sent against him, but was obliged to return to Detroit from lack of support. Colonel McArthur and Colonel Cass were then sent with about 350 men to the River Raisin for the expected provisions by what was later known as the Ypsilanti-Tecumseh trail. General Brock had advanced and taken possession of Sandwich, whence he began to bombard Detroit. On the 15th of August he summoned Hull to surrender. Hull refused but sent a messenger after McArthur and Cass. On the 16th the enemy crossed the river without opposition and Hull surrendered. This cowardly act is one of the most disgraceful surrenders in American history. Behind his fortifications General Hull had more troops than General Brock had all told, while Cass and McArthur were already within striking distance of Brock's rear. At the very moment of the surrender one gleam of enterprise would have resulted in the crushing of the

British forces between the two wings of the American army.

90. The disasters for which Hull was responsible did not stop with the surrender of Michigan. At Fort Dearborn, where Chicago now is, the United States kept a small garrison under Captain Heald. While still in Canada Hull sent orders to Heald to evacuate. These orders Heald unwisely tried to obey, as hostile Indians were about him in great numbers. When a few miles from the fort he was surrounded, over fifty of the people with him massacred (August, 1812), and the rest carried away as prisoners.

91. The British at once moved their headquarters to Detroit, and all Michigan was now again under English control. General Brock went east to win another victory, but to lose his life, at Queenstown Heights. Colonel Henry Proctor was left in command of this upper country. His first measures were wise and humane. He made very little change in Michigan government and directed existing officials to continue to discharge the duties of their positions. But before long he began to make many changes. He gave inadequate protection against the Indians; he attempted to tamper with the loyalty of our French inhabitants, and finally demanded of leading citizens of Detroit that they take the oath of allegiance to the English king. This would have made them traitors to their own country, and when they refused they were driven from the city. His petty acts of tyranny were almost unbearable, and he was guilty of some horrible atrocities that will appear in the sequel.

92. As soon as the disaster in Michigan was known, the people to the south of us took prompt steps to recover the lost ground. Those of Kentucky and Ohio

were especially eager, and without waiting for orders from the central government, they began to organize in war bands and chose General Harrison for their leader. General Harrison soon found himself at the head of a considerable army, and so in September was able to relieve the small American garrison at Fort Wayne, which was being besieged by about 600 Indians. Indian disturbances along the Wabash called back Harrison, but he sent part of his army under General Winchester down the Maumee to Fort Defiance. By the end of the year the people of the Raisin Valley were suffering terribly from the ravages of the Indians and called on General Winchester for protection. Winchester accordingly sent forward Colonel Miller with some 600 or 700 men. Miller reached Frenchtown (Monroe) January 18, 1813, where he encountered and drove away, after a severe battle, a force of English and Indians. A few days later General Winchester himself came to Frenchtown with 250 more men. These he stationed in the open near Colonel Miller's fortified camp. But although rumors of an approaching enemy were rife, General Winchester built no fortifications and took no extra precautions. Before daylight of January 22, the American force was fiercely attacked by Colonel Proctor, and though Colonel Miller's troops could hold their ground in their fortifications, the exposed wing was cut to pieces and destroyed. The rest, by Winchester's orders, then surrendered, but only after the most explicit promises of protection from the Indians. Proctor at once carried his prisoners to Malden, leaving the American wounded mostly in private houses in Frenchtown. The next morning the Indians returned to Frenchtown, killed and scalped all the severely wounded, and carried the

rest away, many to be afterwards murdered, some with awful torture.[1] This terrible tragedy, the worst in our history, was directly due to Proctor's cruel treachery in leaving the wounded entirely unprotected, in spite of American protest, and he further refused to make any effort to recover those that had been carried away. The American loss, killed in the battle or murdered by the Indians, was 397, and the British had nearly 600 prisoners.

93. The disaster to Winchester was a serious check to the plans of General Harrison. He remained in the Maumee Valley during the rest of the winter and the spring, building a larger fort, Fort Meigs, at the rapids. Here late in April he was attacked by Proctor with a force of 980 men, and Tecumseh with 1,200 warriors. During this attack, 800 Kentuckians came to join Harrison, and attacked the British. At first they were successful, but going too far in disobedience of their orders, they were all killed or captured. Proctor now inhumanly stood by and allowed the Indians to massacre a large number of the prisoners before his eyes. The slaughter was stopped by Tecumseh, who denounced the British general[2] as unfit to command. The British and Indians then retired to Michigan. In July Proctor returned to Ohio with a force of 400 regulars and 2,000 Indians, and attacked Fort Stevenson at Sandusky. Here Colonel Croghan was in command with a force of 160 men, and the British met with a most bloody repulse. They then retired from Ohio for the last time.

[1] One young man was tied before a fireplace in a house to which the Indians had taken him, and roasted all day. He was not relieved of his sufferings by death until after nightfall.

[2] Proctor had been promoted for his River Raisin victory.

94. By August Commodore Perry had completed the fleet which he had been building at Erie, and by the middle of the month was at Put-in-Bay. The British fleet under Captain Barclay, though about equal to the American, had sought protection under the guns of Malden. But early in September Captain Barclay set out to find his foe and very quickly succeeded. At noon on September 10, the battle began, and in three hours the British captain and all his fleet had surrendered.

95. As soon as the necessary repairs could be made on the now doubled fleet, Harrison embarked his troops on it and sailed to Malden. Proctor had already fled. Leaving a garrison at Malden, and detaching General McArthur to reoccupy Detroit, General Harrison pursued and overtook the British and Indians on the River Thames, just above the Moravian Town. The battle lasted but five minutes. Tecumseh was killed, all his Indians scattered in the forest, and nearly the whole British force killed or captured. Proctor himself made his escape with a little over 200 men.

96. Lower Michigan was now recovered, and there was no enemy anywhere near. Mackinaw, however, was still in British hands, and its distance away made its capture extremely difficult. No attempt was made in 1813, but General McArthur built Fort Gratiot at the head of the St. Clair River. In July, 1814, an expedition started from Detroit of five of Perry's ships and 750 men under Colonel Croghan, the hero of Fort Stevenson. But the expedition was badly managed and after capturing St. Mary's and the British posts, Croghan was repulsed in his attack on the fort at Mackinac and returned to Detroit. Two small ships were left to prevent provisions from reaching Mackinac

by way of Georgian Bay. Had they succeeded the English must have abandoned the post. But both were surprised and captured. Mackinac remained in English hands until after the treaty of peace.

97. Only one other military event of importance belongs to our immediate history. During the summer and fall of 1814 the main fighting of the war was along the Niagara frontier. It was feared that the troops and militia in that portion of what is now Ontario lying between Lake Erie and Lake Huron, would all be withdrawn, as a reinforcement to the British troops already along the Niagara. Besides from this same region were drawn great quantities of flour for the British army. So in November General McArthur left Detroit with a force of 750 or 800 men. He moved along Lake St. Clair to the St. Clair River, crossed this and passed over into the valley of the Thames, and thence moved rapidly towards Hamilton where were great quantities of stores. When he reached Brantford on the Grand River, his enemies became so active that it was not prudent to go farther; he turned southward to Dover, fighting militia on his way, and thence by way of St. Thomas and Sandwich hastened back to Detroit. This raid of McArthur's was one of the most daring operations of the war and completely successful. Not only were troops called back from Niagara, but he destroyed all the mills but two and these were not enough to furnish flour for the inhabitants.

98. In August, 1814, negotiations for a treaty of peace between Great Britain and America were opened at Ghent by commissioners from the two countries. Strange to say the very first question broached was as to the fate of Michigan. For the British commissioners demanded at the outset, and as a condition of

any further negotiations, that Michigan together with what is now Wisconsin and the northern parts of Indiana and Illinois, should be set apart as a reserve for the Indians. This in a modified form is the old idea of Lord Dorchester of a "Buffer State" of Indians under British protection between the Canadian frontier and their too aggressive neighbors on the south. Of course, such a demand could not be granted and at last it was withdrawn, and a treaty completed. The treaty was signed by the commissioners December 24 and ratified by the United States Senate February 17, 1815, and all hostilities at once ceased.

99. According to this treaty of Ghent the boundaries between the two countries were to be the same as provided by the treaty of 1783, and "all territory, places, and possessions whatsoever, taken by either party from the other during the war . . . . shall be restored without delay and without causing any destruction or carrying away any of the artillery or other public property originally captured in said forts or places." Then a commission of one commissioner from each country was to determine the boundary line from the foot of Lake Ontario to the head of Lake Huron and another like commission was to do the same from the head of Lake Huron to the Lake of the Woods. Each nation was to make separate treaties with the Indians, leaving them with all the "possessions, rights, and privileges" they before enjoyed.

100. In spite of the provisions of the treaty above quoted, the English officers were in no hurry to restore the one post they held in Michigan. The great fur region was now to the west and northwest of us, and to all this Mackinac was the key. As long as this was in

possession of a British garrison the great "Northwest Company" could control the fur trade. As soon as they learned of the treaty, they protested vigorously against giving up Mackinac at all, and found a willing and zealous abettor of their designs in Colonel McDonall, the commander of the post. Their influence was sufficient to wring from Sir Gordon Drummond, the British commander-in-chief, the promise that the post would not be given up until the question of its surrender could be referred to the king. This would mean a delay of months, perhaps of years. But the old game would not work now. Colonel Anthony Butler, who had been left in command at Detroit, refused to withdraw his troops from Malden until possession of Mackinac was given, and held the place even after the British force to occupy it had reached Sandwich. Then President Madison sent a letter to General Drummond at once so frank and conciliatory that the British officers scheming in the interests of the great fur company had not a pretense on which to base their machinations. Nevertheless it was the 18th of July when Colonel Butler finally got possession of the fort at Mackinac, and this was the last American fort in British hands. At last Michigan was again at peace, and hostile forces have never since crossed her borders.

CHAPTER V

STILL A COLONY

Governor Cass

101. References

Original: *Laws of the Territory of Michigan.* Passed by fifth Legislative Council, Detroit, 1833. Contains Ordinance of 1787, the Amendments of 1789 and 1792; the Act of May 7, 1800, dividing Northwest Territory, the Act establishing Michigan Territory of January 11, 1805, the Act for laying out Detroit and granting 10,000 acres of land, the Act authorizing delegate from Michigan, 1819, and the other Michigan Amendments to the Ordinance, the Act confirming land titles, and granting school lands.—*Territorial Laws of Michigan,* four volumes published by the state, Vol. I., 1871, Vols. II. and III, 1874; Vol. IV., 1884.—Lanman's *History of Michigan,* chapters XII.-XVII., New York, 1839.—*Historical and Scientific Sketches,* Paper IV.—*Michigan Pioneer and Historical Collections:* Papers from Archives at Ottawa, 1815 ff., Vol. XVI. Letters of Lucius Lyon, Vol. XXVII., pp. 412-604.

Secondary: *Campbell's Political History,* chapters XIII.-XVI.—Cooley's *Michigan,* chapters X.-XI.—Hinsdale's *Old Northwest,* chapter XVII.—McLaughlin, A. C., "Influence of Governor Cass on Development of Northwest," *Papers of the American Historical Association,* 1888, New York, 1889.—McLaughlin's "Cass" in *American Statesmen Series,* Boston, 1891.—Cooley, *Principles of Constitutional Law,* chapter IX.—"An Account of the cessions of lands by the Indians," by Hon. Alpheus Felch; *Michigan Pioneer and Historical Collections,* Vol. XXVI., pp. 274-296.—*Michigan Pioneer and Historical Collections,* Vol. XXVII.: The Michigan-Indiana Boundary, by Annah May Soule, p. 341. The Southern and Western Boundaries of Michigan, by Annah May Soule, p. 346. This Article constitutes, also, Vol. II., No. 2, of the *Publications of the Michigan Political Science Association.*—"Toledo War," *Michigan Pioneer and Historical Collections,* Vol. XII., pp. 409-414.—On the Method of Admission of Michigan as a state, see Jameson, *Constitutional Conventions,* chapter IV. §§ 194-209.

102. After having recovered the lower part of Michigan by his victory at the Thames, General Harrison, on the 14th of October, 1813, appointed General Lewis Cass as provisional governor of the Territory. Cass was soon appointed the regular governor by President Madison. A better selection could scarcely have been made, "and it was a great and lasting boon to Michigan when it was given a governor at once so able, so patriotic, so attentive to his duties, and so worthy in his public and private life of respect and esteem."[1] The Territory also got a new secretary in the person of William Woodbridge, another excellent appointment, and the new chapter in our history is to be very different from the last.

103. When Governor Cass entered upon his new duties, conditions here were critical and the situation was very trying. War is always terrible and its ravages are always great, and Michigan suffered more from it than any other part of the country. But the evils here were greatly aggravated by Proctor's year of rule. His own acts had been the source of much misery to the people, and much greater misery came from his wilful neglect to exercise any restraint upon the Indians. In the Raisin Valley especially (to a less extent in the other settlements) the ravages by the natives had been very great. The cattle had all been driven off or had become so wild that they could not be reclaimed, and could only be hunted and shot as one might hunt the deer. Provisions of every kind had been carried away or destroyed, and the inhabitants were reduced to actual distress. They had to be aided to prevent starvation. Moreover at the best they were poor, and lacked self-reliance and enterprise, and

[1] Cooley, *Michigan*, p. 204.

instead of rousing themselves to unusual exertions to overcome their difficulties, they yielded to their misfortunes, settled back in despair, and were utterly helpless. Hence they not only needed aid, but they needed much more to be encouraged and aroused, and besides they needed to be taught better methods of agriculture than they had ever known. The direct aid given was very slight, as Congress allowed but $1,500 for this purpose, but by good judgment and energy on the part of the governor all the difficulties were gradually overcome, and the Territory was placed on the sure road to prosperity.

104. With the treaty of Ghent Indian difficulties did not entirely cease. But in 1814 and again in 1815 treaties were made with those in and about Michigan securing nominal peace. Outrages, however, continued, and these were usually followed up and punished by the inhabitants of the territory. The hanging of two Indians at Detroit proved to be a much needed lesson, and outrages soon ceased. Nevertheless, there was one continuous source of trouble. The English still did everything they could to maintain their influence over the Indians. Every year the Indians flocked in great numbers to Malden and Drummond's Island to receive the presents which England bestowed upon them, and in the drunken orgies that followed these visits serious outrages were sometimes committed. This exceedingly dangerous practise the United States again took no steps to prevent. Had another war come with England, and once or twice we were very near it, the frontiers of Michigan would again have been exposed to all the horrors of the War of 1812.

105. Just before the War of 1812 John Jacob Astor had appeared in the fur trade of Michigan, and was try-

ing to purchase the American interests of the Northwest Company. The war came before he had succeeded. After the war Congress passed a law in his interest forbidding foreign traders from operating within the limits of the United States, a perfectly justifiable act when we remember the pernicious activity of the Northwest Company during the war. Mr. Astor soon established himself at Mackinac, and his agents were soon everywhere gathering that wealth which still continues to give prominence to the Astor family.

106. For some years after the war also, British officials were exceedingly exasperating. Their communications were overbearing and supercilious in tone, they were constantly attempting to assert their authority on this side the line, and even dared to assert the right of search of American vessels on the lakes. In spite of the fact that he had been left with but little military force in the Territory, and that his province was weak as compared with the Canadian province opposite him, and the Indians were still virtually hostile, the governor spiritedly resisted all attempts at invasion of our rights as an independent nation, and in the end successfully put a stop to all encroachments. The tampering with the American Indian he could not stop, mainly because of the entire indifference of the central government.

107. The first necessity for the development of Michigan was more people. But before people could come in any considerable numbers lands must be available, and none had yet been surveyed or put on the market. In 1812 Congress had offered lands as a bounty to soldiers, and 2,000,000 acres of these were to be located in Michigan. As soon as the war closed surveyors were sent to lay out these lands. They

began on the boundary line between Ohio and Indiana and went north, they claimed, for fifty miles. This would have taken them nearly as far north as Charlotte and across excellent farming country. But they described the region as a succession of tamarack swamps, bogs and sand barriers, with not one acre in a hundred, probably not one in a thousand, fit for farming purposes.[1] This report of the surveyors caused the soldiers to be given lands elsewhere, which on the whole was an advantage to Michigan; but it also gave the territory a bad name which hindered immigration and which it took some years to overcome.

108. On the whole, however, the second decade of the century was one of very substantial progress. By 1818 there was population enough to justify the state in passing to the second stage of government under the Ordinance of 1787. But the people were well satisfied with their government as it was, and voted against doing so. This same year public lands were for the first time put on the market, and on August 27 the first steamboat, the steamer Walk-in-the-Water, made its appearance at Detroit. Immigration was thenceforth much more rapid and much more regular. In 1818 also the first Protestant church was organized, and the year before had witnessed the beginning of the first regular newspaper,[2] the *Detroit Gazette.* All these things indicate that American immigration has begun, as distinguished from the older French and Canadian immigration, and the character of the territory is rapidly changing. Thus in spite of the fact that popula-

[1] This report is found in *American State Papers, Public Lands*, Vol. III, p. 164.

[2] One had been published for a short time in 1809 by Father Gabriel Richard.

tion decreased during the war, and in spite of all adverse reports and conditions, our population in 1820 was 8,765, nearly double that of 1810.

109. These changing conditions necessitated a change of plans for the local administration of government. Governor Cass accordingly adopted the county system, a plan much more in accordance with American ideas and experience than the districts of Governor Hull. In 1815 all that part of the Territory in which the Indian title was extinguished was laid out as Wayne County. Within a year or two part of this region was divided off as Macomb County and all north of it was made into the county of Michilimackinac. By 1822 eleven counties had been laid out and most of them organized. In 1819, by law of the United States, the Territory was given a representative in Congress to be elected by the people. This seems to have been the first elective officer in Michigan Territory, and "politics" was not long in following the voting.

110. In 1823 a series of changes began in the government of the Territory. According to a law of Congress of that year the president was to appoint a legislative council to consist of nine persons selected from a list of eighteen elected by the people. To the governor and this council was given the legislative power for the Territory. In 1825 the council was increased to thirteen, selected from a list of twenty-six, and in 1827 the people were authorized to elect their own council. Thus from 1823 on Michigan had a legislative body of one house.

111. By 1820 also the increasing flow of population began to make it evident that better facilities for moving about were necessary. So roads began to be laid out. These radiated from Detroit in various directions

off into the forest, towards the Maumee Rapids, towards Pontiac and Saginaw, towards Chicago, towards the Grand River, and towards Fort Gratiot.

In 1825 the Erie Canal was completed, an event of highest importance to Michigan. From that time on an enormous and rapidly swelling stream of population began to pour into the Territory. Daily steamers were soon running between Detroit and Buffalo, and by 1830 there were 31,639 people within our borders.

112. In 1831 Governor Cass was offered and accepted the position of secretary of war in President Jackson's cabinet. Michigan had many capable men within its borders who were fully acquainted with the conditions and needs of the territory. But President Jackson selected none of these to succeed Cass, but after considerable delay appointed George B. Porter of Pennsylvania. Mr. Porter was absent from the Territory much of the time, and during the delay before his appointment and most of the time after, the duties of governor were performed by the secretary. This office also Jackson had to fill, and the appointment fell, to the indignation of our inhabitants, to a young man not yet twenty years old, Stevens T. Mason of Virginia. Fortunately a territorial governor now had few important functions to perform, and so Michigan's interests did not really suffer.

113. The hordes of people now coming into Michigan were from New York and New England. They were aggressive, enterprising Americans. The Ordinance of 1787 provided that there might be three or five states made from the Northwest Territory and fixed their boundary. It further provided that "Whenever any of the said states shall have 60,000 free inhabitants therein, such state shall be admitted, by its delegates,

into the Congress of the United States, on an equal footing with the original states in all respects whatever, and shall be at liberty to form a permanent constitution and state government."[1] By 1832 Michigan had more than the required population. The question of statehood was accordingly submitted to the people, and was carried in the affirmative by a large majority. But several things combined to prevent immediate action.

114. As we have seen, Ohio was admitted as a state in 1802. In 1816 Indiana became a state and two years later, in 1818, Illinois was admitted. The boundaries of the Territory of Michigan had remained as first given up to this time. But with the admission of Illinois, all the rest of the Northwest was added to Michigan, or, in other words, our boundary was extended west to the Mississippi. In 1832 there was an Indian outbreak along the Mississippi known as Blackhawk's War. This was partly within our own extensive borders, and Michigan troops assisted in bringing the Indians into subjection. Just as this war was being brought to a close Michigan in common with the rest of the country was swept by a scourge of Asiatic cholera.

115. Thus two years passed before further steps were taken towards the formation of a state. In 1834 a census of the territory was taken and it showed a population within our own Peninsulas of 87,278. This was more than the Ordinance required. Congress was accordingly asked to set off the country west of Lake Michigan as a separate territory, and in April, 1835, an election was held for delegates to a state convention to frame a constitution. The convention met in Detroit in May, and produced a constitution which was submitted to the people in October and met with their approval.

[1] See Appendix, *Ordinance 1787*, Art. V.

At the same time with the vote on the adoption of the Constitution, Isaac E. Crary was elected to represent the new state in Congress, and a governor, lieutenant governor, and members of the state legislature were elected. When the legislature met Lucius Lyon and John Norvell were elected United States senators, courts were organized and judges appointed. All these officials at once assumed the duties of their offices and our state government thus began in 1835.

In all this Michigan had followed strictly the Ordinance of 1787; according to its terms Congress should now admit its delegates to Congress, and Michigan would, without further formality, be one of the states of the Union. But Congress was differently minded, and an exciting episode of Michigan history was to follow.

116. As we have seen, the act creating the state of Ohio had been passed in 1802. Its northern boundary, both in the Ordinance of 1787 and by the act setting apart the state, had been fixed as the parallel of latitude running through the southern extreme of Lake Michigan and intersecting Lake Erie. But the knowledge of our geography was quite imperfect in 1787, and had not been corrected in 1802. It was afterwards found that Lake Michigan, as compared with Lake Erie, was farther south than had been supposed, and the line in question struck Lake Erie about twelve miles east of the mouth of the Maumee River. This fact had been suspected when the convention framed Ohio's constitution, and so a provision was put in the constitution, that, in case the parallel through the southern extreme of Lake Michigan intersected Lake Erie east of the mouth of the Maumee, then the boundary should be along a straight line running from that extreme to the northern cape of Maumee Bay. This latter line was

actually surveyed in 1817, and called the "Harris" line. The parallel was also run about the same time and called the "Fulton" line. The strip between the two, about eight miles wide at its eastern end and five at its western, soon became the subject of a lively controversy between the territory and the state. As the strip began to be settled, Michigan assumed jurisdiction over it and established local governments. In 1832 Toledo was founded, the people who settled there wished to belong to Ohio, and this brought on what is known as the Toledo War. In 1835 the Ohio legislature voted to extend its jurisdiction over the disputed tract, and Governor Lucas proceeded to Toledo with a force of 600 militia. Stevens T. Mason was then acting governor of Michigan and he at once occupied Toledo with 1,000 men. But the two forces never came to blows. President Jackson sent two commissioners to make peace and they succeeded in inducing the militia to disperse. Ohio afterwards attempted to resurvey the Harris line, but her surveyors were arrested by the watchful Michigan officials and Ohio officers who attempted to get possession were thrown into prison. Michigan thus maintained possession.

117. The dispute was destined to be settled in Congress, and here the advantages were all against our state. For it was the eve of a presidential election, and Ohio was a state with presidential votes and Michigan only a territory. Besides Indiana and Illinois had both been extended north of the Ordinance line, and their interests were thus with Ohio. Hence, when the Michigan constitution, with the Ordinance line for the southern boundary, was submitted to Congress, Congress passed an act providing that the state should be admitted when its constitution was so amended as to conform to

the Harris line. In compensation for this loss of territory, the possessions of the state north of the Straits of Mackinaw were extended westward from the territorial line to the Montreal and Menominee Rivers.

In exchange for the little strip of agricultural land on the south and what afterwards proved to be the thriving city of Toledo, Michigan gained a great tract of wilderness and mountains on the north, humorously referred to at the time as fit only to furnish the state with bears and Indians, but which has since made her one of the richest states of the Union in mineral products.

118. Before Michigan could be admitted as a state she must accept the conditions imposed by Congress. This necessitated a new convention. This convention met at Ann Arbor, September 4, 1836, and rejected the new boundaries by an emphatic vote. But now national politics were for the first time beginning to invade the state. People were dividing into Whigs and Jacksonian Democrats. The Jackson party now called a convention of its own members. They met at Ann Arbor, December 6, 1836, and although a mere party convention, known as the "frost bitten convention," with no authority whatever to speak for the state, they assumed to accept the boundary prescribed by Congress. The dominant party in Congress chose to accept this action as legal, and Michigan was recognized a state of the Union January 26, 1837.

CHAPTER VI

STATE AND NATION

119. References

Green, *Making of England.*—Macy, *Constitutional History of England,* chapter XII.—Medley, *Manual of English Constitutional History,* Introduction.—Montague, *Elements of Constitutional History of England,* chapters I. and II.—Stubbs, *Constitutional History of England,* Vol. I., chapter V.—Gardiner, *Students' History of England,* chapters I., II., III., V., pp. 69-73.—Hinsdale, *American Government,* chapter XII.—Cooley, *Constitutional Limitations,* chapter II.—Von Holst, *Constitutional History of United States,* Vol. I., chapter I.—Curtis, *Constitutional History of the United States,* Vol. I.—Willoughby, *The American Constitutional System* (New York, The Century Co.), especially chapters I., II., III., V., VI., VII., VIII., IX., XIII., XIV., and XIX.—Schouler, *Constitutional Studies,* Part II., chapters III. and IV.; Part III., chapter I.—Merriam, *History of Political Theories,* chapter VII.

120. We have thus traced the outward History of Michigan from the first advent of white men to the time of its admission as a state of the Union. When Michigan became a territory, it became for the first time a distinct political unit, but it was nevertheless a dependency and its government for most of the territorial period, was in principle, whatever may have been its administration, purely despotic. During all this and preceding periods, there had been something distinct and unique in the character and spirit of Michigan life. When in 1835 Michigan became a state, it passed to a degree of political independence it had never before enjoyed, and it would seem as if our history had really just begun. But the reality was just the opposite.

With the assumption of statehood, our separate life was merged into the life of the country at large. Our aloofness came to an end. Our characteristics became less and less distinctive, and more and more the national characteristics; our history is no longer a separate one, but is simply a not very considerable part of the larger history of the nation. The only exception to this is in the development of our domestic and local institutions, and such peculiar history as they have we can best trace when we deal with them separately. Hence we may now drop the subject of history as such, and come to what is really the main purpose of this work, viz.: to deal with our political institutions.

121. And first we have seen that Michigan has passed from a territory to a state. What is the meaning of statehood? One of the essential processes in becoming a state was to be admitted as one of the United States. What is our relation to the United States?

122. As to the territorial stage a few brief words in the constitution show fully the condition of a region during that period. "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory" of the United States. The power of the central government over a territory is thus complete. How Congress saw fit to exercise this power we have already seen in the Ordinance of 1787, and in the government provided for Michigan. Towards the close of our territorial period some voice in the management of their affairs was given to the people of the territory. But this was a privilege extended by Congress and could at any time be withdrawn. A state evidently has larger powers. Are they also granted by Congress, and can they be modified or withdrawn at the will of

that body? We saw also from the Ordinance that the president of the United States appointed the Governor and other officials of the territory. These officials would therefore be more or less bound to carry out the wishes of the president, and they were in reality given whatever authority they had by the central government. Are state officials thus derived? are they thus bound? and is the source of their authority the same? These are fundamental questions as regards our state, and the answer to them cannot be given in a word, and is not wholly easy to understand. But they are really historical questions, and we must approach them through history to see their full meaning.

123. As we have seen Michigan was originally French, and French customs and institutions were the first to be established here. But the English conquered the continent, and English institutions were the ones that have everywhere prevailed. So completely is this true in Michigan that there is not to-day a trace of French influence in any detail of our government. These English institutions were not created by the Englishmen who came to America after reaching our shores, but were simply transplanted here from across the seas. Their origin reaches back into the remotest part of English history, which is thus our history, and while we cannot here trace their genesis in detail, we can at least see the great principles in aecordance with which they have been developed.

124. When the Germanic tribes conquered England they formed many little independent states or kingdoms, the size of which is still indicated by such English shires as Norfolk, Kent, or Sussex. Within these little states the people settled in hamlets, each with its own tract of surrounding land, each regulating its

own affairs with little or no interference from any higher authority, and each jealous of its independence among the other similar settlements. These little states could not long exist side by side, and were finally amalgamated into four great states, which for more than four centuries, a longer time than the period of our whole history, were on the map of England as the kingdoms of Northumberland, Mercia, Wessex, and East Anglia. By the Eleventh Century, these kingdoms had become four great earldoms, and it was the lack of unity among them that made the Norman conquest possible. It took a century of stern Norman rule to crush out their differences and make England one consolidated kingdom.

125. These facts illustrate one great characteristic of the English-speaking race. It is what we may call a local patriotism, a spirit of local independence. Its strength is attested by the course of English history. The hamlets remained throughout the centuries, and under the names of towns, boroughs, manors, and parishes, continued to exercise their original powers. With consolidation the little kingdoms did not disappear; as units for the management of affairs of larger local concern than those of the hamlets they retained something of their original powers, and under the name of shires became administrative districts of the larger kingdoms.

126. This same spirit we have inherited in even an intensified form. In the New England colonies, whence our own institutions were largely derived, hamlets sprang up and seized and exercised even more than their old rights of self-government. Shires have been reproduced, and also act with a degree of freedom that they did not possess in the mother country. But in

the colonies themselves this spirit was most marked and they became even more distinct entities than the four great English kingdoms. There were thirteen of these that became the original states of the Union. The people in each always regulated their own affairs almost as completely as if they had been independent states. Each had a well-established form of government, which the people really controlled, and many features of which they had themselves created. Up to the middle of the Eighteenth Century they had, with some slight exceptions, been entirely independent of each other. They had never all coöperated for a common purpose and no cause had ever arisen that appealed to all alike. So confirmed was this habit of separateness that, when in 1754 the final struggle with France began, which vitally and evidently involved the interests of all, the colonies were unable to unite or to coöperate to any extent in carrying on the war. Virginia began the struggle single handed, and carried it on for two years without substantial support from a single one of her sisters, although nearly all the colonies afterwards rendered material aid to the mother country.

127. This state of affairs was not due to an absence of patriotism in America. There was patriotism enough, but it was local. It was a feeling for the separate colonies and not for the whole country. A Virginia, a Carolina, or a Massachusetts could always appeal to the loyalty of its respective people, and meet with a sure response. But no corresponding sentiment could be aroused for America, simply because, in the minds and hearts of the people, no America had ever yet existed. For our present purpose this is the most striking fact of our colonial history, and one we must keep

constantly in mind if we would understand the present position of a state of the Union.

128. The French and Indian war aroused the first faint feeling that there was a common destiny for these American colonies. For the fifteen years following the close of that war in America, George III. kept up a running political struggle with the colonists, which roused them all to opposition, and made evident to them that united action would be necessary to resist his encroachments. A community of interest brought a unity of purpose and of spirit. The first Continental Congress was a result, and at its meeting came the first sudden outburst of a national feeling. For the time being there was a pretty general response to the memorable words of Patrick Henry, "Where are your landmarks, your boundaries of colonies? The distinctions between Virginians, Pennsylvanians, New Yorkers, New Englanders, are no more. I am not a Virginian, but an American."

These words may be regarded as the first conscious recognition of a new principle in American history, the principle of Nationality. This principle found for the time being actual expression when the second Continental Congress assumed the powers of government and began the direction of the war. Here was a new born nation, and Congress was the national head, to which all instinctively turned for advice and direction. By this body independence was declared, and under its advice the former colonies proceeded to organize themselves into separate states.

129. But a true national feeling is a plant of slow growth, and the sentiment expressed by Henry was not old enough, or deep enough, or strong enough, to bring about the immediate consolidation of the country. Con-

gress did not organize any of the ordinary machinery of government, and the powers which it assumed were not only insufficient for permanency or stability, but they were even inadequate to the demands of its immediate purposes. The rapid progress of events almost overwhelmed this new and imperfect government, took away its original authority and completely reversed its relations to the states. After the declaration of independence the states organized their state governments, each in this acting entirely independently of the others. These new governments were the natural and necessary inheritors of the institutions developed by colonial experience and of the powers formerly exercised by the colonial governments. They seemed to the people simply a continuation of their old institutions. With that conservative love of the old, characteristic of all Englishmen, the people now turned to their states, and to that form of government and that exercise of power with which colonial life had made them familiar. The individuality of the states as distinct communities remained, and the old feeling of separateness soon asserted itself.

130. The first definite form of government for the United States was framed in the fall of 1777, and with its adoption in 1781 the relation between the states and the central government was for the first time defined. The plan of government is headed "Articles of Confederation and Perpetual Union between the States," which are all named as parties to the arrangement. The second article expresses clearly the conception of that day as to the character of the states that entered into this plan. "Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated

to the United States." The states, not the United States, are thus the sovereigns, are supreme, and whatever powers the United States has are powers expressly delegated by the states.[1] This theory was consistently applied throughout the Articles of Confederation. In the Congress each state was to have one vote; the delegates were to be appointed "in such manner as the legislature of each state shall direct," could be recalled at any time, and were to be paid by the state. From this whole arrangement the body of delegates from any state was in reality a commission representing the state government, and Congress was, as Edmund Randolph said, merely a diplomatic body. Congress was, in other words, merely a convenient arrangement by which the states could agree upon the course to be pursued in connection with certain prescribed subjects, and they further agreed that "every state shall abide by the determination of the United States in Congress assembled, on all questions which by this Confederation are submitted to them."[2]

131. This discussion ought to make pretty evident the relations of the states under the first definite form of our general government. The states are separate, distinct communities; they are independent of each other; their only outward bond of union is a Congress which has been established by agreement among them, to which they are superior, which is indeed their creature, absolutely within their control. Theoretically the states are sovereign, and Congress not only is not sovereign, but is simply a mechanism by which they can readily reach agreements on certain matters of common concern. From this theoretical relation all subse-

[1] Willoughby, *The American Constitutional System*, p. 14.
[2] *Articles of Confederation*, Art. XIII.

quent relations of states to central government have developed.

132. Thus the old particularistic feeling which persisted so long in English history was still at the close of the Eighteenth Century the dominant condition in our own history. Combined with the Revolutionary spirit still abroad in the land, it brought the country to the verge of anarchy. Indeed, bloodshed had already begun and there were other acts even more significant and more dangerous. A change in conditions became absolutely necessary, and the people had the good sense to see this and to bring it about. The Federal Convention of 1787 was the result, and by this the Constitution was framed. The hope of relief from the threatening conditions of the time lay in strengthening the central government, and the leaders of this convention set deliberately to work to bring about the complete subordination of the states. The great obstacle in their way was the fact that the particularistic feeling was still strong, and this obstacle they only partially overcame.

133. When the convention settled to its work the first question before it was should the sovereignty pass over from the states to the central government or the United States, or be retained by the states? The latter of these alternatives was the condition already existing. If the former were adopted, Patrick Henry's burst of oratory would be taken as the principle of action, state boundaries would be virtually rubbed out, all would be simply American. Administrative divisions of the great country would of course be necessary, and the old states might well serve as these; but the central sovereign would determine the character of their organization and powers. This question was the

most fundamental one that could come before the convention, and although they did not leave it as it was, they did not settle it, and probably could not, and it remained a subject of dispute for the next three-quarters of a century, then to be settled by the most bloody of modern wars. The theoretical result that follows from this fact we shall see as we proceed.

134. The failure to settle this first and fundamental question makes a second one of great importance. What powers is the central government to have and how are they to be exercised? It is in the answer to this question that the nationalist leaders in the convention gained their greatest triumph and one that ultimately, though not immediately, gained their main purpose in connection with the preceding question. We have seen that from the very nature of the Articles of Confederation the states, not Congress, must carry out the measures agreed upon in that body. If soldiers were needed Congress could agree upon the number, but the states must enlist them; if money, Congress could agree upon the amount, but the states must levy the taxes. But in the constitution it is provided that the central government shall levy its own taxes, enlist its own soldiers, in all things be independent of the states, deal directly with the people, and have full authority to put its measures into effect. Provision is made for great executive and judicial departments for the purpose of enabling it to do this. In its method of operation the new government is thus to be really national.

135. This is the great advantage in point of power which the government of the Constitution has over the government of the Confederation, and the difference is really very great. Nevertheless the powers this gov-

ernment can really exercise are granted powers; they are all enumerated in the Constitution, and are granted by the states. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."[1]

136. The powers which the Constitution grants to Congress may be summed up under five heads:

1. Financial, including powers of taxation, but not exclusive.
2. Complete control of foreign relations.
3. Control of the military—army, navy, militia.
4. Control of such things as pass beyond the jurisdiction of states; navigation, public domain, admission of new states, interstate and foreign commerce, post-office, Indian affairs, etc.
5. A few powers that might have been exercised by states, but manifestly of general importance—naturalization, bankruptcy, patents and copyrights.

The general character of all these is manifest; they may all be summed up in the words of one of the first set of resolutions adopted by the Federal Convention. They are powers for the exercise of "which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation."[2]

In the exercise of these powers the central government is supreme.[3] But while they are great and the most striking powers of government, they are by no means all, and not even the most important. What of

[1] *Constitution of the United States,* Xth Amendment.

[2] These resolutions may be found in Curtis's *Constitutional History of the United States,* Vol. I., p. 365. The quotation is from the sixth resolution.

[3] *Constitution of the United States,* Art. VI.

the others? The answer is in the Tenth Amendment already quoted. They remain in the states. The states do not derive their authority to exercise them from the central government. They are their own inherent powers, with which they have never parted, over which the central government never has had, and has not now, any control. Outside of what is given in the constitution, there is no authority anywhere that can interfere with the action of a state. Its action on any subject not therein mentioned is supreme and final. Moreover when any power of government comes in question, the presumption is that it is a state power, and it must be so considered, unless a clause of the Constitution exists placing it elsewhere, or denying it to the states.

137. After all it would seem as if the foregoing discussion could apply only to the original thirteen states. Michigan, and the same would be true of at least twenty-six of her sisters, was admitted by act of Congress, a part of the central government, on terms satisfactory to the central government, and was formed out of territory that had been under the complete jurisdiction of the central government. Our boundaries were fixed by act of Congress in which we had to acquiesce, whether we wished or not, and we never have exercised, or been able to claim in any way, any of the powers which the central government now has. At the beginning of the War of Secession, for example, South Carolina, in a "Declaration of the Reasons which justified and induced" her "to withdraw from the Federal Union," announced that she now *resumed* her place among the nations of the world. Whether or not there was any sense in which South Carolina could resume her place among the nations, one thing is certain;

Michigan could not because she never had any such place. Is not Michigan then as a state a mere creature of the central government, completely subject to the power that created it, and having only those powers granted? Did she not pass from a mere dependent colony or province to that measure of independence which the central government chose to allow?

138. The answer to this question is provided, so far as we need now to see, in documents we have already examined. The first movement of the central government towards dealing with its territory was by the Congress of the Confederation in 1784. An Ordinance was then adopted for all the western territory, and contained a clause that "when any such state shall have acquired twenty thousand free inhabitants . . . . 'they' shall receive . . . . authority . . . . to call a convention of representatives to establish a permanent constitution and government for themselves." The idea in this clause was soon worked out in more definite shape, and in the Ordinance of 1787 took the form: "Whenever any of the said states shall have 60,000 free inhabitants therein, such state shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original states in all respects whatever."[1] Thus when Michigan in 1835 chose to become a state, it had precisely the same right to form its own government, to make and enforce its own laws, that any other state had. By this wise provision of the ordinance, as soon as we were fitted for statehood, we had the same inherent powers that belonged to Massa-

[1] *Ordinance of 1787,* Art. V. This equality of new states with old is implied, though not directly stated in the *Constitution of the United States.* See Willoughby, *American Constitutional System,* pp. 463-4.

chusetts or Virginia, the same inherent authority as if we had been a member of the Union from the beginning of its formation.

139. The conclusion of the whole matter is then that the central government has only delegated authority, and has those powers, and only those, prescribed in the Constitution. Powers not given in that document it cannot exercise. But a state has all powers not prohibited to it by the constitution or not given to the central government, and its authority is original and inherent; and Michigan, though composed of territory once under the complete control of the central government, is, by virtue of the Ordinance of 1787, in all respects on an equal footing with the original states.

CHAPTER VII

THE SOURCE OF AUTHORITY

140. REFERENCES

Cooley, *Principles of Constitational Law*, chapter XVIII. *Constitutional Limitations*, chapter III.—Schouler, *Constitutional Studies*, Part I., chapter I.; Part III, chapter II.—*Fnndamental Orders of Connecticut, Old South Leaflets*, No. 8.—Compact on the Mayflower, found in Bradford's *History of Plimouth Plantation* (Boston, 1898), p. 110, or Hinsdale's *American Government*, 423.—Jameson's *Constitutional Conventions*, chapters I., III. and VII.—Hildreth's *History of the United States*. Vol. I., Virginia, pp. 80, 87, 94, 96, 99, 101; New Plymouth, pp. 158, 160, 167, 172, 175; Massachusetts and Connecticut, chapters VII. and IX. Vol. III., Revolutionary Period, pp. 34, 38, 42, 43-46, 56, 374-397.

141. We have seen, though in a vague way, that a state government has a certain great authority by virtue of the fact that it is the government of a state. One difficult question remains: What is the source of this authority? During the later years of our career as a territory we were partially self-governing, but the source of the authority of our government was then very plain. It existed by virtue of a law of Congress and its authority was thus derived from the central government. We were, in other words, a colony, in very much the same relation to the government of the United States as was colonial Virginia to the government of Great Britain. But, as we have seen, this is not the source of the authority of a state government, and that source we must now seek.

142. This question is again historical. If our powers are now the same as those of the original states, we must then see what was the original basis of their governments. As has just been mentioned the colonial government of Virginia derived its authority from Great Britain. The most nearly independent of all the colonial governments when the Revolution came were the three charter colonies, Massachusetts, Rhode Island and Connecticut. Their charters had been granted by the English sovereign, the last by William in 1691, and in them the king expressly conveyed to the governments all the authority which they exercised. All the laws made in the colonies, all the steps taken in execution of the laws, were by virtue of the authority thus granted. All the other colonial governments, being more dependent on the king, were even more directly exercising the authority of the king.

143. The Revolutionary War of course overthrew the king's authority in America, and the colonial governments derived from the king were left without any basis. They could no longer rule in the name of a king that they no longer recognized, and, with two exceptions, they all broke down. But in their place in every instance arose new governments, which we have ever since called state governments, and which assumed about the same form, and exercised about the same functions, as the colonial governments.. These new governments ruled as the old had. If their authority was no longer from the king, whence was it derived? When this question first arose, the people were unprepared with an answer. They at first hesitated, and then largely turned to Congress, but in the end they fell back upon the true principle, which had

already been established in previous colonial history. This principle we must now seek.

144. When the Pilgrims sailed from Holland in 1620, they had tried to obtain a charter of government from King James, which he had refused to grant. They had obtained a patent for some land from the Virginia Company, which might also have been construed to convey certain powers of government granted by charter to the company. But they did not settle on the Virginia Company's land, and hence had not even that shadow of authority for their subsequent proceedings. Yet they established a government which they maintained for seventy years. They created a legislative body, established an executive and held courts; they made laws and took all needful steps for enforcing them, even inflicting, when needful, the penalty of death. Now if they had no authority to govern, the infliction of the death penalty was murder, and all their other acts were equally unlawful. They must at least in their own minds have had some source from which their authority was derived, as indeed they had, and they have left a clear statement of their principle of action. Here it is in their own words:

"We do by these presents, solemnly and mutually, in the presence of God and of one another, covenant and combine ourselves into a civil body politic . . . And by virtue hereof do enact, constitute and frame such just and equal laws, ordinances, acts, constitutions and offices from time to time as shall be thought most meet and convenient for the general good of the colony, unto which we promise all due submission and obedience."[1] That is, the authority which the government exercised

[1] Compact on the Mayflower, found in Hinsdale's *American Government*, p. 423.

was derived from the people themselves who were to be governed, a doctrine directly opposed to the divine right of kings which the Stuarts were then struggling to establish, and a complete departure from any recognized theory of government of that day.

145. Eighteen years later, that is, on the 14th of January, 1639, the people who were then "cohabiting" in the fertile valley of the Connecticut met in convention at Hartford, where they "associated and conjoined" themselves "to be as one Public State or Commonwealth," and then proceeded "to order, sentence, and decree" the eleven "Fundamental Orders,"[1] which were in fact a written constitution. Under this constitution they established a government, which exercised for the next twenty-five years, with no other authority than the people themselves, all requisite powers of control. Similar processes went on in New Haven and Rhode Island. Thus we see, in the very earliest colonial period, the principle established, that the authority to govern may be wholly derived from the very people who are to be governed.

146. When, then, the dilemma arose at the beginning of the Revolution, it was this, for them, ancient principle that the states fell back upon. Or more specifically it was by the authority of the people of Massachusetts that the government of Massachusetts was set up and exercised its powers, not by the authority of Congress, and not by the authority of the people of the United States. The same was true of every other of the thirteen states, and inasmuch as we are to be on the same footing as the original states in all respects whatsoever, the same is true of Michigan, and

[1] No. 8 of *Old South Leaflets.*

of all of her sisters derived from territory of the United States.

147. This discussion brings to light another important fact. The state governments were set up by the authority of the people of the respective states. The method by which the people have proceeded to do this has been in all cases essentially the same, and peculiarly American. We have already seen that the "Fundamental Orders" of Connecticut were framed and adopted by the people met in convention at Hartford. Conventions are American in origin and development, and this one in Connecticut was not the first. But they were not frequent during the colonial period. When, however, the Revolutionary struggle began, conventions were at once resorted to, and it was during this period that they became the instruments in the hands of the people that they have ever since remained. When the royal governments broke down, conventions everywhere succeeded them, and during the considerable interval before the establishment of permanent state governments, they were the ruling bodies in the various states. Delegates to these were elected by the people in substantially the same way as they had been accustomed to elect representatives to their respective colonial legislatures. When the state governments were formed the plans were invariably made and adopted in conventions, and in all cases but one the governments were established by these bodies. But in Massachusetts the convention plan of government was submitted to the people for adoption before being put in operation, a procedure that has since become the all but universal custom.[1]

[1] The proceedings in Massachusetts are still of some interest. In 1777 a constitution was framed by a committee of the leg-

148. One other feature of importance has characterized the procedure in the formation of American governments, and this again is peculiarly American. In 1629 King Charles of England granted a charter to the Massachusetts Bay Company to found settlements in New England. As granted and intended by the king, this was a commercial charter, intended to form a corporation for commercial purposes. But the members of the company themselves moved to America and so became a part of the settlement. They admitted to the company very many other settlers, and the colony and the corporation thus became to a certain extent identical. As the charter gave the company power to govern its colony, this arrangement made the colony self-governing, and so here we have a self-governing community with its government based on a written charter, and exercising the powers therein granted.

149. When then, in 1639, Connecticut proceeded to set up a government for itself, it followed after the analogy of the example set by Massachusetts. It drew up a document defining the form of government, and the powers it was to exercise, and the government established was based on this document. Here then was the first written constitution, the first in our history, the first anywhere. Always before governments had been established by force of arms, or by the slow unconscious processes of historic development. In the former case the rule was the rule of the strong, who exercised their authority by virtue of their might, by which alone the extent of their power was limited. In

islative body, and submitted to the people in 1778. This was rejected by an overwhelming vote. The legislature then called a convention, which framed the constitution of 1780, and this was promptly adopted. See Jameson's *Constitutional Conventions*, p. 449.

the latter case authority was exercised by virtue of long established custom, and custom was its sanction, and determined the extent of power exercised. But here was the establishment of a government without appealing to force on the one hand, and without the sanction of custom on the other. A need was felt, and the means intelligently and efficiently applied to meet it. This is the conscious establishment of government as government. Looked at in the light of the past, this act of the humble Connecticut farmers must be regarded as one of the great achievements of history.

150. We have now seen the three essential things about the formation of American State Governments. The first is that the source of all authority for these governments is the people of the respective states. The second is that the method of procedure is through conventions which spring from the people, and now report their work back to the people for approval. The third is that these governments are invariably based upon written constitutions, which define the form of government, prescribe the extent of its powers, and the methods in which they are to be exercised. All this we see applies directly to Michigan. The convention of 1835 sprang directly from the people. It framed a constitution which was submitted to and adopted by the people. By its adoption the people ordained and established the government therein provided, and with this as its only sanction our government began to exercise its authority.

151. All this enables us to understand clearly the nature of a state constitution. All the authority a state has, its sovereignty so far as it has sovereignty, resides in the people of a state. But the people cannot directly exercise the powers of government, partly because a

state is so large and the people so many, partly because many of the duties of governing must be performed by individuals, and partly because many of the functions of governing have become so complicated and difficult that special training and special knowledge are required for their proper discharge. Hence the people delegate their powers, or such of them as they see fit, to a small portion of their number, who for the time being act for, and in the name of, the whole. The Constitution is this delegation of power. The persons who under it are designated to perform the various functions prescribed in the Constitution are, to use the apt words of Jefferson, the "servants of the people," whose duty it is to carry out the popular will.

CHAPTER VIII

THE FUNCTIONS OF THE STATE

152. References

Thomas Erskine Holland, *The Elements of Jurisprudence,* especially Part I.—Cooley's *Michigan,* chapter XI.—Fustel de Coulange, *The Ancient City.*—Theodore D. Woolsey, *Political Science of the State,* New York, 1877, Part I., chapters I. and II.; Part II., chapters I., II., IV., V., VI.; Part III., chapters I., XI.—Hinsdale, *The American Government,* Introduction.—Cooley, *Principles of Constitutional Law,* chapter XIV.—Ashley, *American Federal State,* chapter XXIV.—Merriam, *American Political Theories,* chapter VII.

153. When we were dealing with the relations of state and nation, we saw that the powers of the national government were summed up under a few heads and are all of a general nature. That is, they are such as affect all the states, or as cannot well be exercised by any one state, because its authority cannot extend beyond its own limits. These great powers, such as the control of the army and navy, of ports and harbors, of navigation on rivers and the high seas, of interstate and foreign commerce, of foreign relations generally, are necessarily some of the most striking powers of government, but at the same time they are powers comparatively remote from the great mass of the citizens; however important to our welfare, they touch us only occasionally or only indirectly. Hence we do not feel, as we otherwise would, the all-pervading influence of the central government. But there are laws whose presence we constantly feel, whose restraints are

always upon us, whose operation, irksome or beneficial, we constantly appreciate, and upon the working of which our welfare immediately and directly depends.[1] These laws we need now to inquire into, to ascertain, if possible, something of their character.

154. First let us observe that as citizens in a country which we call free we have rights. It used to be the case in earlier stages of society that men had no rights, in the sense that they have now. A person could enjoy only such privileges or such possessions as he could vindicate for himself. He could secure his family, if he had one, his personal possessions, and even his freedom of movement, only by his own strong arm. Yet manifestly, by his individual might a man could secure but little for himself, even if he were strong, and nothing at all if he were weak. A state of affairs where every man must look to himself, and to himself alone, for whatever he has, must evidently be a condition of great uncertainty and constant anxiety, varying only in its degrees of misery. Under such conditions, when a man must expend all his time and energy in the defense of himself and his belongings, any great advance in any direction is impossible. Progress can begin only when there begins to be some security, and can go forward only in proportion as that security increases. But security can only mean that a man has something which is universally recognized as his, and which some power beyond his own strength will maintain him in possession of. That is, he must have rights for which there is adequate sanction; for rights cannot be rights which depend only on individual will and prowess.

155. But to what power beyond himself must the

[1] Cooley's *Michigan*, p. 228.

individual look for that security which he cannot himself provide? Men have never lived singly or alone, but in herds or flocks, so to speak, and indeed it is from this very fact that the need of security has arisen. They have lived together, and it has somehow come about, slowly and painfully as a fact, that certain things have come to be recognized by all as the rights of each, and all have united to see that each got somewhere near what was recognized to be his. Historically the first "all" which has maintained the rights of its individual members has been the family, a family, however, consisting of several generations under a common head, often its founder. Such a group, because by its union it has interests in common, we may call a community. From this beginning there developed among our own ancestors larger communities, clans, and tribes, and when life became settled instead of nomadic, little independent states. The power originally in the family passed to each of these in turn, and each took upon itself, but invariably in a somewhat fuller measure, the functions which the family had begun to perform. With the many ages that have elapsed since the family began its work, more and more rights have been recognized as belonging to the individual, and have been clearly defined and firmly established. Thus to-day the fulness with which individual rights are recognized and maintained marks the degree of civilization which a country or a people has attained.

156. Here, then, we have the first great function of a government. It is to maintain for the individual those rights which are recognized as his, but which he would be unable to maintain for himself. What these rights are in detail no one has ever yet succeeded in

enumerating. They were roughly summarized by Otis, in his speech against the Writs of Assistance, as the rights to life, liberty and property; by Jefferson, in the Declaration of Independence, as the rights to life, liberty, and the pursuit of happiness. More systematically they have been summed up under the following heads:

I. The right to personal safety and freedom.

II. To the society and control of one's family and dependents.

III. To reputation.

IV. To the advantages which the community secures to its members generally, such as: to pursue one's occupation without molestation, to use public highways and navigable waters, and to be free from malicious prosecution.

V. To possession and ownership.

VI. To immunity from damage by fraud.[1]

In addition to the universal rights thus classified there are a great many particular rights arising from special conditions. A person in general may have no claim to a certain property or against a certain other person. But if the property has been left him in a will and that other has been made executor, then he has a right both to the property and against the person. Many special rights arise from trusts, or from special customs, and one great class comes from contracts.

157. Now let us observe that the laws for murder, assault, threats, or neglect that might be dangerous; the laws with regard to marriage, and marital relations; with regard to the control and education of children; the laws for slander and libel; the laws protecting men in going to and fro in their ordinary

[1] Holland, *The Elements of Jurisprudence,* p. 160

pursuits or occupations; the laws under which all our property is held, transferred, or transmitted; and the laws with regard to illegal prosecution, and against fraud, are all state laws, and are enforced through the machinery of the state government. So also are the laws for contracts and all others for the maintenance of special rights.

All these great classes of rights, as well as the methods of maintaining them, have been worked out for us by many generations of race life. They are the achievement of our race history. We inherit them from the past, and the greatest and most fundamental, from the remote past. This inheritance constitutes the great boon of the age in which we live, and gives it its advantage over any preceding age. And as we see, the state is thus the heir to the great heritage which the past has bequeathed to us.

158. As this first great function of government is mainly within the province of the state, to secure each person in the rights which are recognized to be his the state must restrain all other persons in any action that would interfere with or invade those rights. It says to each one of us "thou shalt" or "thou shalt not," and as it speaks with authority, this is government. In other words the state regulates our conduct. But it does not regulate our conduct completely, that is, with reference to every detail of our action. Within a certain very narrow circle my actions do not appreciably affect others, and so within that limit I may do as I please. When this narrow limit is passed, the State, that is, the community in which I live and of which I am a member, demands of me that my conduct shall be such as not to affect injuriously the rights and the welfare of others. So long as I so conduct myself

of my own will, the state again will have nothing to say. Otherwise the regulations of the state apply.

159. What things a government will undertake to regulate and how far its regulations will go depend upon a number of things. In the first place the conception of what individual rights are differs greatly in different ages or among different peoples, and of course a government will not undertake to maintain for individuals rights that they are not recognized as possessing.

160. In the second place, as races grow older, the individuals composing them learn more self-control, and need less restraint. In England and America, for example, two and three hundred years ago, laws were very much more minute than now, dealt with subjects that they now never touch upon, of dress, of conversation, of personal habits and actions, even to the smallest details, and every effort was made to enforce these laws in all their minuteness. Such measures were not foolish; they were necessary then, and their careful enforcement is one of the reasons why we are now more capable of governing ourselves than any other people. They are not necessary now because of the better self-control manifested in individual action.

161. A third consideration rests upon a fact peculiarly American. In some of the states, of which Michigan is one, government is by the people and for the people. In most other countries of the world, and in some of the states, this is not true. Government is by a class of the people, often a small minority, and in such cases is certain to be conducted with reference to the interests and conceptions of the ruling class. Such a fact will of course give a very different character to the acts of a government than would be given in our

own state, where, ostensibly at least, government is for the interests of the whole body.

162. But besides securing its members in the rights that are acknowledged as theirs, a state has other almost equally necessary and fundamental functions. We have already seen enough to recognize the fact that a government is not a mere accident. Its existence is necessary and both its form and its functions are historic. Without government a race could not advance beyond the first and primitive conditions of existence, and without the security it affords the individual could be nothing more than a savage. He could acquire, could develop into, none of those things which now go to make the civilized man. But when men are associated in government, when they have combined together to secure for each those rights which can be secured in no other way, it is but natural and necessary that by that same combination they should accomplish many other things. And in fact they always have. There are many necessary or desirable things that men cannot do for themselves acting singly, but that are easily within their reach acting together. Comparatively few members of a community could by their unaided effort give their children a good education. Yet education is a necessity, for without it the progress of the community and the development of the individuals would be impossible. So the state takes charge of education, and large opportunities in this line are opened to all. Michigan itself has built railroads and canals, though it does not now own either. It has laid out roads and built many public buildings. Many of the municipalities, which derive their authority from the state, furnish their inhabitants with water, and own electric lighting plants. There is now a disposition

to take up many other things, such as street railways, telephone systems, and gas plants.

163. What then is government? A very simple definition is now possible: It is simply the community, the state, the city, the county, the town, acting through machinery which it has developed, and following forms and methods that have become customary and familiar, and doing those things which can better be done by community action than by individual effort. There is nothing mysterious about it, and it should need among us no superstition for its support. What it should do, what it should not, is simply a question of expediency. It should undertake those things which in the long run are for the best interests of the community, and so for its members; for the best governed community is that in which the welfare of its component individuals is best conserved. As to what those things are experience is in part our guide; in part we must still find out by further experimenting. Everything now seems to indicate that among us governmental functions will greatly expand within the near future.

CHAPTER IX

THE FUNCTIONS OF GOVERNMENT

164. References

Woolsey, Part III., chapter IX.—Cooley, *Principles of Constitutional Law,* chapter III.—Montesquieu, *Works:* Amsterdam, 1758; Esprit des Lois, Livre XI., Cap. VI.; found in translation in Bohn Library.

165. Having thus seen in a general way what the functions of state are, let us now inquire into the character of the process of governing. Government as we have seen undertakes to regulate men's conduct, not in all respects, that would be impossible, but within the limits of the subjects that government is now accustomed to deal with. The regulation of the conduct of many people can be only by rules to which all must conform. The making of the necessary rules then is evidently the fundamental function. The rules which a government makes are called laws, and the function of making rules is thus the legislative. But if the conduct of men has to be regulated at all, it is evident that the mere making of rules is not enough. The rules are useless unless men are obliged to observe them, and for the very same reason that rules need to be made their observance must be enforced. The making of rules is only half, so to speak, of the process of governing; the other half is their enforcement. This then, the enforcement, the execution, of its regulations, is the second great function that every government must have in order to be government, and is called the

executive. Now it is evident that these two functions every government must have. It must make and enforce its regulations or it does not govern. But it is also evident that when this is done, when rules are made and people are obliged to observe them, the process of governing is complete. Hence the legislative and executive functions, using the words in their broadest sense, are all the functions of government there are, or that are possible.

166. We have seen above the great ends that government is to meet. It must secure certain conduct from the members of the community, or undertake certain measures which they wish carried out. To decide what rules of conduct shall be adopted or what measures shall be undertaken, and in what form, evidently belongs to the legislative function. When this has been decided upon, the enforcement of the rules adopted or the carrying out of the measures decided upon is an executive function. Now, since people are not always what they should be, either in character or intelligence, nor always in accord with regard to what should be done, the executive process must often involve the use of force. Men must be compelled to obey or to submit. *Coercion* must be applied. But in the application of coercive force, two quite different processes have developed, involving methods so distinct that they have come to be considered as distinct functions, although both are really subdivisions of the executive. This difference in method of procedure will be plain on a little examination. It is evident that when rules of conduct have been laid down, men may on occasion openly refuse to obey them, or when measures have been decided upon they may see fit to resist. In such a case, if government is to maintain

its authority, it must compel compliance by the direct and immediate application of force. Thus as an illustration mobs sometimes interfere with men in their daily occupations. The strong arm of government needs then to be exerted, and force enough should be used to secure those interfered with in their undoubted rights. On the other hand the rules may be violated before the fact is discovered or can be prevented, as in the case of a thief or a murderer. It then devolves upon the authorities to find out who it is that has violated the laws, and to what extent. The only way in which force can now be applied is by way of punishment for the disobedience.

167. Here we have then two distinct cases for the exercise of executive authority. In the first case coercion is applied at the very moment the offense is being committed; its time is present. In the second case coercion is applied after the act of disobedience; the time of the offense is past, and coercion can only take the form of punishment. From this fundamental difference there necessarily follow great differences in procedure. For when men openly revolt it is in crowds or in masses. The application of force is not as punishment, but to secure submission, and it is not proportioned to the offense, but all the force is used necessary to the purpose in hand. The force employed, while it may be a body of policemen, or a constable or a sheriff with his *posse,* is in the last resort the military, and continued resistance is war. This kind of coercion is often spoken of as military coercion, and the exercise of it regarded as a distinct function is called the executive.[1]

[1] The use of this word in this sense must be distinguished from its use in the larger sense given above.

168. In the other case, when the coercion follows the act of disobedience, the first question is as to who is the guilty party. Individuals, not masses, are always dealt with. If a person is accused he must be proven guilty, or else is presumably innocent. A trial is the result, and the inquiry as to guilt is made under long established and carefully worked out rules. In fact the forms of procedure followed are all very old and all of historic growth. If the guilty person is found, punishment is applied in proportion to the offense, and the punishment itself is prescribed in the very law that has been violated. This process is called peaceful coercion, and this function, regarded separately, is called the judicial function.

169. Thus we see that the executive, that function of government which looks to the enforcement of the rules, divides itself into two functions, the executive and judicial, according to the method of procedure. To the former of these will belong, not only the immediate application of force, where force is necessary to secure obedience to the rules, but all other duties that involve immediate and direct action. As we have seen, it comes within the province of a legislature to do more than enact laws. It may decree the laying out of a road, the digging of a canal, or the erection of a building. As all governments must have money to carry on their operations of whatever kind, and such money is primarily, and in the last resort, wholly derived from taxation, the taxing laws will also involve much direct action. All these things, and all others like them, will naturally fall within the province of the executive. To the latter falls not only the application of punishment, or whatever remedy is needed, but also the inquiry as to when and to what extent the law has

been violated, and who is guilty of the disobedience. Trial, interpretation and application of the law, are parts of the judicial process. But these are not the purpose of the judicial function. Its purpose is, as has been stated, the enforcement of the law, and these are but necessary incidents in the process of attaining its purpose.[1]

[1] The conclusions of the latter part of this chapter may be represented in diagram thus:

- **Functions of Government**
  - **I. Legislative**
    1. To decide upon measure to be carried out.
    2. To enact laws.
  - **II. Executive**
    1. Executive
       a. To carry out measures.
       b. Military coercion.
    2. Judicial — Peaceful coercion.

CHAPTER X

FORM OF STATE GOVERNMENT

170. References

Folk-moot and King.—Gardiner, *Students' History of England,* chapter II., paragraphs 7, 10, 12, 16, 17.—Medley, *Constitutional History of England,* p. 117.—Stubbs, *Constitutional History of England,* Vol. I., chapter I., pp. 133, 134.

Witan.—Gardiner, pp. 45, 73, 112, 113.—Macy, *The English Constitution,* pp. 133, 134.—Medley, pp. 117-122.—Stubbs, Vol. I., pp. 133-157, 291, 385.

Parliament.—Gardiner, chapter I., pp. 182, 183, 193, 199-204, 218.—Bright, Vol. I., pp. 137-139, 152-170, 185, 193, 194, 195.—Green, *Short History of England,* pp. 128-130, 152-160, 169-181.—Ransome, *Rise of Constitutional Government in England,* pp. 60-67, 70.—Montague, pp. 53-57, 62, 63, 68-70.—Stubbs, *Early Plantagenets,* p. 157, chapter IX., 207-234.—Traill, *Social England,* Vol. I., pp. 393-403.—Stubbs, *Constitutional History of England,* Vol. II., chapter XV.—Taswell-Langmead, *English Constitutional History,* chapters IV. and VII.

Courts.—Gardiner, pp. 126, 127, 212, 348, 470.—Montague, pp. 26, 27, 31-33, 42-50, 156.—Mrs. J. R. Green, *Henry Second,* chapters IV., V., VI.—Stubbs, Vol. I., pp. 346-355, 375-392, 469, 495.—Macy, *English Constitution,* chapter VII., pp. 193, 195, 250, 251.

Woolsey, Part III., chapters I., II., III., IV., VI.—Macy, *Our Government,* chapter III.—*Popular Government,* by Sir Henry Sumner Maine, Essay II.—Cooley, *Principles of Constitutional Law,* chapter XI.—Schouler, *Constitutional Studies,* Part I., chapter IV.—Montesquieu, *Esprit des Lois,* Livre XI., Cap. I., II. and VI.

171. Having seen the purpose of government we now need to take a step forward and see the machinery of government, the form of organization by which it accomplishes its purpose, its institutions and officers.

Like so many of the other questions we have had to deal with, this, also, is a matter of history. Our government in all its essential characteristics is not something created anew by us. Our institutions, both state and local, we inherit, and their roots reach far back of the beginning of things distinctively American. To understand fully the principles of their structure, to see what they are and why they are, we should need to go back to more primitive conditions, and follow their development to their present form. In all their fundamental features our institutions were brought from Great Britain, and it is there we should need to turn to find their beginning. Such a task is manifestly too large for us to undertake at present, but certain fundamental principles we need to see.

172. When our English ancestors, a Teutonic race, migrated to the Island of Britain, their political organization was tribal. Each tribe was practically independent of others. The supreme power of this tribal community was in the assembly of all the freemen in arms, called the folk-moot, or the hoste. The folk-moot elected the tribal chief, if there was one, appointed the war leader when one was needed, decided on peace or war, whenever such questions arose, made such regulations for the tribe as the primitive conditions required, was the last resort in the settlement of disputes, and in general was the sole depositary of such sovereignty as the tribe possessed.

There was also another body of men, called the witan, made up of the wise and influential men of the tribe, the elders or old men, which acted as adviser and guide for the folk-moot. As the little tribal states united into larger kingdoms, it became impossible for the folk-moot to assemble. The witan then took its

place, and thus came to stand for the whole people. It became, in other words, the great national council, and theoretically at least, inherited the great powers of the folk-moot.

173. Here then we have what we may regard as the fundamental principles of English government for the first six hundred years of English history, although there was a constant tendency away from them. But when in the Eleventh Century William of Normandy came to the English throne, we have a complete reversal of these conditions. William became king of England by right of conquest. As his conquest was complete, his power was absolute. The whole sovereignty of the nation, as well as all the functions of government, were in his hands alone. Yet the great national council was not wholly destroyed. It survived his reign and subsequent kings had it to reckon with. The result was a struggle lasting through the next six hundred years, during which governmental institutions were hammered into the general form which they still have, and the fundamental principles of our government, substantially the principles of primitive England, were placed upon a firm foundation.

The details of this struggle we cannot follow, but its results are still of vital importance. In the first place time brought a change to the national council. It came to be composed of one class of the English people, the small but powerful class that hardened into the English nobility. The common people, the great mass of Englishmen, had no voice in it. In the Thirteenth Century, however, representatives of the people, or certain of them, were summoned to the council, and this element, once introduced, soon increased both in number and influence. The two elements were somewhat

incongruous, and they soon came to sit apart. Before the end of the Seventeenth Century this council had acquired full legislative power for the nation. Here then we have a bicameral legislature, one part of which is based on the principle of representation.

174. While Parliament was thus acquiring form and substance, another feature of government of equal importance was being slowly developed. William the Conqueror had all power of government, legislative, executive, judicial. He could not of course personally hold all the courts necessary for his double kingdom, but he took pains to have the judicial power exercised by men whom he kept under his own control. Henry I. and Henry II. both developed the judicial system thus begun, and the latter appointed judges who traveled from shire to shire to hold courts.[1] From this our modern circuit courts have descended.

A judicial system thus became a fixed feature of English government and slowly hardened into definite form. But the justice administered by the courts was the king's justice; the judges were the king's judges; he appointed them and could remove them at will, and so could control their decisions. In the time of William and Mary, however, an act was passed by Parliament by which the judges were to hold their office for life, and their independence was thus secured.

175. Thus, as a result of many centuries of history, English government had progressed a long way from the form with which it began. At first all power was in the hands of the folk-moot; then all was in the hands of the king; now there were three departments, each measurably distinct, and each having in a general way a certain class of functions to perform. But the

[1] The shires were grouped into six circuits.

departments did not wholly conform to the theoretical division of functions, as the king and parliament, or one house of it, had much judicial power, and the lords shared in the executive, while Parliament had already come to dominate all.

176. Before this work was completed in England migration to America had begun. This migration began in the Seventeenth Century and during this same period the new ideas of government were having their final clash with the old. Considerable numbers of Englishmen migrated, and they invariably brought with them the new theories. They laid the foundations of the future American commonwealths, and put into quiet and unobstructed operation the principles that were established in England only after a fierce struggle, and then only imperfectly. Thus it has happened that America inherited almost entirely the advanced ideas of the times, and in the freedom of her institutions has always been far in advance of the mother country.

177. As we know, Virginia, our first settlement (founded in 1607) was for the first dozen years managed entirely by the trading company that founded it. The company sent over a governor and appointed a council to assist him. But in 1618 a majority of the stockholders, belonging to the most advanced political party in England, sent over a governor with instructions to call representatives of the settlers to some participation in the government. In 1619 these representatives, twenty-two in number, met with the governor and council at Jamestown. This is the first legislative body in America. By a sort of accident it is composed of two elements, the burgesses, as they were called, the elected representatives of the people,

and the governor and council appointed by the company. At first, again, they sat together, but ultimately drew apart into separate houses so that this first American legislature became bicameral.

178. A few years later Massachusetts was founded, also by a trading company. The charter gave the company complete control of the colony. Its officers were a governor and eighteen assistants elected by the members. The main power granted by the charter was in the general court, or meeting of the stockholders, at which the governor and assistants had to be present. This company was chartered in 1629 and the next year moved to America. Out of this came a result quite different from anything the leaders of this great movement had planned. The governor and assistants were the natural executive officers of the colony, and the general court its legislative body. By 1634 the members had become so far scattered that they sent representatives instead of all assembling. Three representatives from each town, called deputies, met with the governor and assistants for legislative purposes. Here again are two elements, the governor and assistants elected on a general ticket, so to speak, and deputies elected by the towns. In 1644, as a result of a quarrel, the two portions separated, and the legislature became bicameral. The example of Virginia and Massachusetts was decisive for colonial legislatures; about all assumed the bicameral form, and all state legislatures are now bicameral.

179. In all the early colonies judicial functions were not separated from executive. In Virginia the governor and council, in Massachusetts the governor and assistants, were the courts, but the latter colony, as Plymouth had before, went so far back to the principles

of tribal England that the general court was the supreme court. During the rest of the Seventeenth Century and the first half of the Eighteenth definite judicial systems were gradually developed in all the colonies. But judicial departments, although the supreme judges were appointed by the king, were never quite independent. The legislatures managed to keep a certain control over them until the Revolution. Nevertheless, by Revolutionary times, colonial governments were well settled on the three department plan. But as in England the division into departments was not strictly according to the logical division of functions.

180. When the colonies changed into states, the state governments were mainly modeled on the preceding colonial governments. That is, the three departments were retained, and with about the same confusion of functions. But during the whole Revolutionary period, and for fifteen years before, men thought much about political affairs, much more than under ordinary conditions. Certain political ideas became more fully understood and more sharply defined than ever before. Then a great political work appeared in Europe when, in 1747, Montesquieu published his *Esprit des Lois.* This book speedily found its way across the Atlantic, and was especially familiar to the Revolutionary leaders. As a result Montesquieu has left a marked impress on all American governments.

181. The great Frenchman had studied carefully all forms of government with a view of ascertaining their principle. He pointed out the distinctions we are already familiar with in the functions of government, and drew the conclusion that the three departments should correspond strictly to the functions, and should be separate, independent and coördinate. Thus the legislature of a

properly constructed government should have neither executive nor judicial functions, and the executive and judicial departments should each be confined to the one class of duties, a condition that we saw did not exist either in England or America.

182. The first fruit of this principle was the national constitution, with its three coördinate departments sharply set off from each other.[1] State constitutions were soon modeled after the United States', with the result that state governments everywhere show the same sharp distinctions. We are thus able to understand Article III of the first constitution of Michigan and see how much of history it unconsciously contained. "The powers of the government shall be divided into three distinct departments: the legislative, the executive, and the judicial; and one department shall never exercise the powers of another except in such cases as are expressly provided for in this constitution." And also Article III of our present Constitution:

"Sec. 1. The powers of government are divided into three departments—the legislative, executive and judicial.

"Sec. 2. No person belonging to one department shall exercise the powers properly belonging to another, except in the cases expressly provided in this Constitution."[2]

We shall see as we examine the Constitution that the division is not absolutely complete, and indeed could not be.

183. Thus the form of our government as it now is,

[1] There is a serious departure from this in allowing the senate the power of confirmation in executive appointments, and this departure has certainly worked serious evil.

[2] See Cooley, *Constitutional Limitations*, p. 106 f.

has come about by a long process of development and is the result of many ages of experience of the English-speaking race. Is this form an advantageous one? and if so what is the advantage? To answer these questions, we need to examine a little more carefully the principle of structure underlying the form the organization has taken. Judge Cooley has said that the American system of government is an elaborate system of checks and balances.[1] This we see in the three departments, in the bicameral legislature, and even, though less perfectly, in all our local organizations. While this statement is thus true as a fact, it does not quite express the real principle which our structure embodies. When all the power of government was in the hands of one person, the king, this single sovereign would both make and enforce the regulations which he deemed necessary. But with us no one man, or body of men can perform the full act of governing. We have no "governor" in the strict sense of the term. The power of making regulations is entrusted to one set of men, the power of enforcing them to a distinct set, or sets, and all must perform their part before the process of governing is complete.

184. Two results follow from this "principle of structure" not otherwise attainable. One is that the creation of departments is a process of differentiation characteristic of all development, and results in increased effectiveness in the different parts. For the powers of government are classified according to their nature, and each class of functions is allowed a certain independent development. The character of each function thus unfolds itself in a more untrammeled way,

[1] *Constitutional Law*, p. 160.

and by narrowing the field for the officials better knowledge and greater skill are acquired.

185. The second result, though on the whole the less important one, has already been stated. The departments act as a check upon each other. The abuse of power is thus rendered more difficult. Unfortunately it is often relied upon to do what no device of government can do, that is, to check all evil by subdividing authority, and is sometimes carried so far as to deprive government of even the power of being efficient. For the departments to act as a check on each other, it is evident that they should be independent and coördinate. The legislative function is the fundamental one, and the legislature is apt to feel itself the ruling power; but an independent executive and an independent judiciary are quite as essential to an efficient and safe government.

186. There is another sense in which the expression "form of government" is used, and then it has a much deeper significance than we have yet seen. More than 2,000 years ago the great Greek thinker, Aristotle, studied all the forms of government that there then were, and classified them under three heads:

1. The Rule of the One, a Monarchy,
2. The Rule of the Few, an Oligarchy,
3. The Rule of the Many, which he called a Democracy.

At first this classification seems to be one only of form, but its real basis is something very different. The "Rule of the One," where one man is monarch, and all others are merely subjects, is now obsolete, and we need not discuss it. The real distinction lies between "The Rule of the Few" and "The Rule of the Many." "The Rule of the Few" means that there are two classes of people, a ruling and a ruled class. Two

results follow from their relation. One is, as experience has always shown, the ruling class always govern in their own interest, neglecting or sacrificing the interests and welfare of the others. They so manage that the benefits of government accrue almost entirely to themselves. The second is that the class relation brings about the feeling of superior and inferior, a condition essentially injurious to both classes. Slavery is an extreme form of this, and the harsh and barbarous cruelty of the slaveowner is not less characteristic than the extreme self-debasement of the slave. Where the relation of classes is less extreme the results are less marked, but always in the same direction; narrowness of sympathy and ruthless, overbearing pride on the one hand, and depressing humility and lack of self-respect on the other.

187. When we pass to the "Rule of the Many," if we come to something essentially different, it must be a condition where class relation ceases to exist. The "Many" must be all; anything less would give a ruling and a ruled class. Aristotle never knew an example of a real democracy. Until within a century it has existed only in primitive conditions, or in small countries. But to-day Michigan and most of the northern states have governments based on this principle.[1]

188. Early Plymouth was the first example of American Democracy, and illustrates its simplest form. There all the people met together for governmental purposes. They elected their own chief, whom they called governor, made all their own regulations, and settled disputes. In other words there was a folk-moot, as purely so as in primitive England, and all the power resided, as in the early times, in this folk-moot. All the

[1] All the southern states are intensely oligarchical.

people took direct part in the government. Such a government is called a *pure democracy.*

But it would be impossible for all the people of Michigan to meet together, and they could perform no act of government if they did. In what sense then is Michigan democratic? The answer is the answer that Plymouth made. When it became inconvenient for all the people to meet, they sent representatives, and these representatives were clothed with the full authority of their constituencies. Michigan adopts the same expedient, and is thus not a "pure democracy." The fact that the people act through representatives makes it *Republican.*

189. We have already seen that colonial Massachusetts also resorted to the plan of representation. It was thus a little republic. Was it then in all essential respects as Michigan is now? There was one simple but essential difference. In Massachusetts the deputies were elected by only a small portion of the men of the colony, not more than one-fourth, only by those who were members of the corporation. In other words, the government was by "The Few." Massachusetts was an oligarchical republic, and although conditions changed, remained oligarchical till the Revolution. But in Michigan the representatives are elected by, and stand for, all the people, it is government by "The Many" and so this is a democratic republic.

190. As Michigan, then, is a democracy we must understand something of what that means. The very first principle of democracy was expressed by Jefferson "All men are created equal" and "are endowed with certain unalienable rights." That is, all men are equal before the law, a principle recognized in America before it has been anywhere else.

Then, as our democracy is republican, the people do not exercise the ordinary powers of government directly, but delegate, entrust, them to a certain few. These few are the representatives of the people. We usually speak only of the members of the legislature as our representatives, but all our officials are really representatives, and exercise authority which really resides in the whole body politic. This is just as true of the governor and judges, as of the legislators. All officials exercising derived authority are responsible for the way their functions are performed to those from whom the authority emanates. If this were a kingdom, they would be responsible to the king; if it were an oligarchy, to the ruling class; since it is a democracy, they are responsible to the whole body of the people. In either of the first two cases the government would be despotic. But our government is free, and is free because those governing are responsible to the very persons whom they govern. It is by this indirect method, and for the most part, only by this indirect method, that is, through the responsibility of the officials to them, that the people are self-governing.

Finally it is evident that such a government, deriving all its authority direct from the people, must depend for its character on the character of the people. Government, as we have seen, is designed to bring the greatest of human blessings in its train; it may bring the greatest evils. That our government may bring with it the good that it ought, three things are essential on the part of the people. The first consideration is one of morality. As the people determine the character of their government, they must have true notions of right and wrong. The government cannot rise higher than its source, and unless it is conducted according to just prin-

ciples, it becomes corrupt and vicious, the source of evil to the people themselves, instead of good, and in the end will destroy itself. Then the people must be intelligent. They must be able to see into governmental processes, understand their significance, and know what are and what are not correct principles of procedure. Above all they must have a quick appreciation of the fact that any process which deprives one person of his rights, however humble he may be, or one class even though the lowliest, is an attack upon the rights of all. Then the people must have a trained watchfulness to discern quickly abuses of public power. When the authority of government can be turned to private account the advantages are so great that there is a constant and very great temptation to abuse of public functions. This a people must detect quickly and be able to check quickly. In this state, and even more in certain others, there are some of the gravest public abuses in the world, and they are possible only because there is a lack on the part of the body politic in all three things here mentioned, a lack of watchfulness, a lack of insight and quick appreciation of political movements, and a lack of a quickened public conscience which condemns promptly and emphatically the vicious acts of public officials. Public education, thorough and complete, is the only remedy for such a condition.

CHAPTER XI

CONSTITUTION OF MICHIGAN

191. REFERENCES

Journal of the Constitutional Convention of 1835, printed by order of the Convention, Detroit, 1835. This Constitution is found in the *Revised Statutes of Michigan of 1837 and 1838* (Detroit, 1838), pp. 33-46, and in the *Revised Statutes of Michigan of 1846* (Detroit, 1846), pp. 17-31.—*Journal of the Constitutional Convention of 1850.*—*Constitution of 1850.* In its original form this constitution is found in the *Compiled Laws of 1857,* pp. 45-83. In its present form, that is, with all the Amendments up to the present time, it is readily accessible in the latest legislative Manual.—*Federalist,* No. 84, Hamilton on Bill of Rights.—Lalor, *Cyclopedia of Political Science,* Bill of Rights.—Schouler, *Constitutional Studies,* Part III., chapter III.—Cooley, *Constitutional Limitations,* chapter IX., first part.—Hinsdale, *American Government,* chapter XLVII.—Macy, *Our Government,* chapters IV. and XXXVI.—Ashley, *The American Federal State,* chapter XVIII.—An Account of the Court of Chancery, written by Ex-Governor Alpheus Felch, may be found in *Michigan Pioneer and Historical Collections,* Vol. XXI., pp. 325-336.

192. In the light of the principles now established let us examine in a general way the actual government of Michigan. As we have already seen, our first constitution was made and adopted in the fall of 1835. Although it was over a year before the United States recognized the new government thus established, nevertheless the latter went into operation at once, and Michigan ceased to be a colony and became in fact a state. The constitution of 1835 remained in force for

fifteen years. Let us examine then in a brief way the main features of this our first state government.[1]

193. If we were to examine the first written constitution, the "Fundamental Orders" of Connecticut, we should find it to consist substantially of two parts. The first, in the form of a preamble, is really a kind of "social compact," more fundamental than any constitution, and almost precisely equivalent to the compact on the Mayflower: "We the Inhabitants and Residents of Windsor, Hartford and Wethersfield now cohabiting and dwelling in and uppon the River of Conectecotte and the Lands thereunto adioyneing, ... doe therefore assotiate and conioyne ourselues to be as one Publike State or Comonwelth."

The eleven *Orders* themselves constitute the second part of the Constitution; they establish the government, define its parts, and their functions, and give to the officials the necessary authority.

In state constitutions as developed in the Revolutionary period a third general feature was added. This third part was a bill of rights. Lists of fundamental rights were produced very frequently during the political struggle preceding the Revolutionary War. The Stamp Act Congress, and the First Continental Congress each adopted one, as did many of the colonial assemblies and conventions. They were not claims to new privileges, nor as a rule to those peculiarly American, but to the old rights of Englishmen, such as were laid down in Magna Charta, and in the Petition of Right. Such a bill of rights was added to the national Constitution by the first nine Amendments, and it perhaps is not strange that they should appear in the state constitutions. Nevertheless these

[1] For *Constitution of 1835*, see Appendix IV.

old bills were meant to secure the people in certain rights as against their king, whose power in the first place was absolute. In such cases their significance is plain. But when the people are no longer subject to the king, when the source of all their authority is themselves, the significance of attaching to their own constitution lists of fundamental rights is not so easy to see. The habit must have arisen from a failure to appreciate the meaning of their own changed condition.

194. In the first constitution of Michigan all three of these features are present. The preamble contains the "social compact" clause: "We the people of the territory of Michigan . . . . . do by our delegates in convention assembled mutually agree to form ourselves into a free and independent state . . . . and do ordain and establish the following constitution." The first article is a bill of rights of some twenty-one clauses, and the remaining twelve articles prescribe the form and powers of government.

195. What the general form of government was we already know. There were of course the three departments, legislative, executive, judicial, and there was of course a bicameral legislature. This legislature was to meet annually. There were from 48 to 100 members of the house of representatives whose term of office was one year, and one-third as many senators, whose term was two years, a half to be elected annually. The state was to be divided into from four to eight districts each to elect the same number of senators. Here is a feeble attempt to accomplish two things; one was to make the senate a perpetual body, as is the senate of the United States; the other to give to the senate a different basis from

that of the house, like the assistants in Massachusetts, and the magistrates in Connecticut.

196. In the executive department six officials were provided for, governor, secretary of state, treasurer, auditor-general, attorney-general, and superintendent of public instruction. Of these the governor was elected; the treasurer was appointed by the legislature; all the others were appointed by the governor, subject to confirmation by the senate. The governor also appointed prosecuting attorneys in each county, and was thus the real chief executive of the state and could be held responsible for the conduct of the executive department.

197. The judicial department consisted of a supreme court whose judges were appointed by the governor for a term of seven years, and county courts with elective judges, probate courts in each county, and justice of the peace courts for the townships. The legislature had to provide for the organization of the county courts. The judges were paid by fees and during this first period of our state history the courts were very unsatisfactory. In 1835 the legislature provided for a court of chancery, one court for the whole state; Elon Farnsworth was the first chancellor. The court was abolished in 1846.

198. Article XI of this constitution prohibited slavery, as was already done by the Ordinance of 1787. Thus in a double sense Michigan was "born free."

199. In 1850 a convention was called and a new constitution framed and adopted. In this new document the first of the three main features of the original constitution is entirely wanting. There is no social compact. The preamble is simply an ordaining clause. At first sight it seems as if the bill of rights, the second

great feature, were also missing. But while the bill is no longer the first article, and there is no distinct collection of rights anywhere else, it is in reality present. It is, however, scattered in various places, though mainly put in connection with the provisions about the legislative and executive departments.

200. The first article now defines the boundary of the state. It is the boundary laid down by Congress in 1836 with the exception of the portion between the Upper Peninsula and Wisconsin. Ignorance of the geography had led Congress to prescribe an impossible boundary, and the present line is the one prescribed for Wisconsin in 1846. Article II fixes the seat of government at Lansing, a spot in the country which had been selected for the building of a capitol some three years before.

As we have already seen, Article III divides the government sharply into three departments, and Articles IV, V and VI deal respectively with these departments. With Article V should go Articles VIII and IX, which provide for other state officers, and their salaries, and Article XII which provides for a superintendent of public instruction, as all these belong to the executive department. These articles prescribe for us the frame of our state government.

201. Article IV begins: "The legislative power is vested in a senate and a house of representatives," thus giving us the expected bicameral legislature; Article V begins: "The Executive power is vested in a Governor;" and Article VI: "The Judicial power is vested in one Supreme Court, in Circuit Courts, etc.," thus doing away with the old county court system. After all that has gone before, the full significance of these clauses ought to be plain to us. For we already

know that, according to our American theory, whatever power a state has rests in the people of the state. "The people of the State of Michigan do ordain this constitution," and these clauses are thus the expression of their supreme will. The senate and house of representatives, then, when they exercise powers of legislation, as representatives of the people, exercise the power with which the people have clothed them. And so we find in Section 48 of Article IV "The style of the laws shall be 'The people of the State of Michigan enact.' "[1] What is true of the legislature is of course true of the governor and judges, and so again we find in Section 19 of Article V, "All commissions issued" by the governor "shall be in the name and by the authority of the people of the State of Michigan," and in Section 35 of Article VI "The style of all processes" of the courts "shall be 'In the name of the people of the State of Michigan.' " In other words all these classes of officials, as representatives of the people, act in the name and by the authority of the people.

202. Then we need further to observe that in all cases the grants of power are plenary: "The legislative power is vested," "The executive power is vested," "The judicial power is vested." If nothing more is said in the various articles, the government established by the constitution will have the full power of the state. If restrictions are placed upon it, the government will have all the power not expressly or by direct implication denied to it. If a question as to its authority is raised, the presumption is always in its favor. On the other hand, if the people do not wish to restrict their representatives, they need to add

[1] *Constitution*, Art. IV. § 48. Macy, The English Constitution, *In the Queen's Name*, p. 56.

nothing more to their constitution beyond defining the departments to which the various classes of power are respectively entrusted.[1]

203. If now we look at the article with regard to the legislature we shall find, in addition to the section giving this first grant of power, forty-seven other sections, and they can have but one purpose, to limit the legislative power granted by the people, by prohibiting certain actions altogether, and by allowing others only in certain ways or under certain conditions. In the articles with regard to the executive the first plenary grant is so restricted and modified, and the power so dispersed by the peculiar organization of the department, that the governor has been deprived of much of the authority that should be left with him. Thus, as one writer has said,[2] the abuse of the appointive power was prevented by taking it away, and so with others.

204. The judicial department, though directly less restricted, is of course limited by the general restrictions of the government, and especially of the legislature.

205. In addition to the articles of the constitution which deal directly with the departments, there are a dozen others, some of considerable length. Two of these, X and XI, deal with the organization of local governments, counties and towns; the others deal with special subjects, such as finance and taxation, corporations, exemptions, etc. It is obvious that all these additional articles can operate only as restrictions. The fuller and more detailed the constitution the greater the restriction, and the more limited the field

[1] See Cooley, *Constitutional Limitations*, p. 106.
[2] Judge Campbell, *Potitical History*, p. 535.

of action. That the Constitution of 1850 is longer and fuller than that of 1835 simply means that the state government has less power of initiative and is less vigorous.

206. By another series of changes the vigor of the state government has been greatly lessened. These were, as we shall see more fully as we advance, such as greatly to decentralize the government. Power has been taken from the state and placed in local governments, even state laws being left entirely for their enforcement to local officials. These changes have enormously impaired the efficiency of both local and state governments.

207. All this goes to show that there must have been on the part of the people grave distrust of those whom they elected as their officials. So far was this spirit carried that it has been said that we have "a constitution with many good features but which intimates from first to last that no one is to be trusted."[1] It was the peculiarity of the period preceding 1850 that the political agitation was such as constantly to call in question the motives of public officials. Fear that men in authority would abuse the power entrusted to them was thus aroused, and the simple method of preventing such abuses was to withhold the power. And yet of the officials before 1850 there was no real ground for distrust. But, as if constant insinuation had at last aroused the very spirit that it deprecated, there has been plenty of reason for such distrust since.

208. Another thing we need to note in passing is that all officials derive their power from the constitution, and are absolutely limited by the terms of that instrument. "The power exercised must be within the

[1] Campbell, *Political History of Michigan*, p. 535.

grant made, and if it be not, it is usurpation."[1] If a public officer fails to perform the duties imposed upon him by the constitution, or acts contrary to its terms, or goes beyond its limits, he is guilty of misfeasance or malfeasance in office, and the state will find means for his dismissal, and if necessary for his punishment. The constitution accordingly makes provision for the impeachment of the judges and the governor and gives the governor authority to remove other officials for cause.[2]

209. On the other hand the people themselves are also bound by their constitution. They cannot exercise directly the powers which they have delegated to others. For example, after having decreed that "the legislative power is vested in a senate and a house of representatives," they cannot make laws by their own direct action. Before they can do so the constitution must be amended or abrogated. The same is of course true of any other class of powers. As long as the constitution stands, the functions of the state must be performed by the agents or "public servants" therein designated.

210. But the constitution can of course be changed, or done away with. It is our fundamental law, which the people have enacted, to which they are superior, and which therefore they can at any time change or repeal. In fact the constitution itself prescribes the method by which it may be amended or a new one put in its place. The legislature may at any time, by a two-thirds vote, submit amendments to the people, and these, if a majority of those voting approve, become

[1] Introduction to Cooley's *Blackstone*, p. ix.
[2] *Constitution*, Art. XII.

part of the constitution.[1] And then every sixteen years, beginning with 1866, and oftener if the legislature so directs, the question is to be submitted to the people as to whether there shall be a general revision. If they vote in the affirmative, a convention is to be elected, and a new constitution may be made and submitted. Of course it will depend upon the popular vote whether the new instrument will replace the old one or whether the old shall be retained.

[1] *Constitution*, Art. XX. § 1.

CHAPTER XII

THE LEGISLATURE

211. References

Constitution, Art. IV.—Schouler, *Constitutional Studies,* Part III., chapter V.—Willoughby, *The American Constitutional System,* chapters VIII., IX., XIX.—Cooley, *Principles of Constitutional Law,* chapter X. *Constitutional Limitations,* chapter VI.

212. The structure of our legislature we have already in part seen. It consists of a senate and a house of representatives.[1] The senate is composed of 32 members elected from single districts,[2] no county to be divided unless entitled to more than one senator.[2] The house is to have from 64 to 100 members,[3] elected also from single districts, but no township or city is to be divided. If a city is entitled to more than one representative, the number required is elected on general ticket. The basis of representation in each house, that is, the basis for forming the districts, is population. A census is to be taken every ten years, beginning with 1854,[4] and after this, and after each United States census, the districts are to be rearranged. The sessions of the legislature are biennial and the term of members, of both houses, is two years.[5]

[1] *Constitution,* Art. IV. § 1.
[2] *Ibid.,* Art. IV. § 2; Morey's *Government of New York,* p. 46.
[3] *Ibid.,* Art. IV. § 3.
[4] *Ibid.,* Art. IV. § 4.
[5] *Ibid.,* Art. IV. §§ 33, 34.

213. With regard to this organization of the legislature two things are worthy of notice. From the census provision mentioned above, it is evident that the legislative districts, both of senators and of representatives, change on the average every five years. This is of course to keep the population of the state as nearly evenly represented as possible. In 1850 when our population was changing so rapidly, some such provision undoubtedly seemed necessary. But this frequent shifting of districts now works only harm, and is in fact an emphatic evil. Not only does it give great opportunity to the politicians in the way of gerrymandering, but it actually prevents any real local representation. The people of a district do not act together long enough to acquire a community of feeling or a community of interest, and their political capacity is reduced because they do not have time to learn to act well together.

214. Then this legislative body is bicameral; but, although it is substantially like all our modern state legislatures, yet, if we compare it with the older and original bodies of this kind, we shall see that we have copied the shadow rather than the substance. In the older legislatures the two houses had a different basis, or stood for different things in the community. Thus the House of Lords is composed of one distinct class of the population; the House of Commons is representative of another. In such colonial legislatures as those of Massachusetts or Connecticut, one house was composed of "deputies" from the towns—towns, not population, being the basis of representation, and the other was made up of a fixed number of "assistants" or "magistrates" elected from the colony at large. In a legislative body thus composed the two houses sup-

plement each other. They are subject to different influences and hence are a mutual check. These facts operate to prevent inadequate, hasty or ill-considered action, and make it more difficult to carry through schemes detrimental to public interests. Although some such relation of houses must be regarded as the real principle of a bicameral legislature, it is not illustrated in Michigan. Our two houses differ only in size. The basis of both is population; the members are elected in the same way, at the same time and for the same term, and are subject to the same influences. The two houses are in fact a mere reduplication of the same organ, not an advance upon, but a deterioration from, the older organization.[1]

215. In spite of their similarity, the two houses have not quite the same functions. Many of the appointments made by the governor must be submitted to the senate for approval, the senate thus retaining this much of the executive power of the old colonial councils. The house has the sole power of impeachment,[2] and the senate is to try all cases of impeachment,[3] the chief justice presiding if the case is against the governor or lieutenant governor.[4] But so far as the making of laws is concerned the two houses have precisely the same powers. Any bill may originate in either house and must be acted on by both.

216. Let us now turn our attention to the function of this legislature in our state government. As we already know the legislative is the fundamental function. Hence the legislature will have the power of

[1] See, however, Macy's *English Constitution*, pp. 45 and 46.
[2] *Constitution*, Art. XII. §§ 1, 3.
[3] *Ibid.*, Art. XII. § 2.
[4] See *Constitution of United States*, Art. I. § 2, last clause § 3, clauses 6 and 7.

initiative, as it were, in all the functions the state undertakes. It will not only make the laws which the other departments are to put in force, but it will also as a rule decide upon what measures are to be undertaken and enterprises begun.

217. Most of the enactments of the state legislature are what we may call in a narrow sense of the term laws. Their purpose is to make the state an orderly, well behaved community, to give to it that security of person and property which the best interests of the people demand, to secure us in all those rights to which, as we have already seen, we are as civilized people entitled. This is the fundamental work of the legislature. Our rights, as we know, are constantly increasing and growing better defined. Modern society is constantly growing more complex, and is gaining new interests and a greater variety of interests, than ever before. Hence laws in this narrow sense will be more numerous and more complicated than they were even a few generations ago.

218. But in addition the legislature must do many other things besides pass such laws, partly as contributory to this its main purpose, and partly in making provision for other important interests of the people. In this field of legislative activity also complications have greatly increased. There are many new enterprises in these modern times, and the modern spirit is much more broad and humane than was that of a few generations ago. Once there were no prisons for ordinary criminals. The old dungeons and castles were for prisoners of war or for political enemies. All ordinary offenders, as well as hardened criminals, were either let go without punishment or else maimed or killed.

But Michigan does not maim and does not kill,[1] no matter what the offense, and hence the legislature must see that proper prisons are provided for those who cannot safely be left at large. The state goes farther and provides certain institutions where some attempt is made at reformation. The first poor law dates only from the time of Queen Elizabeth. Now not only are the poor cared for, but there are state institutions where provision is made for almost every class of unfortunates. Then there are many state buildings, state roads, a state park, and there were once state canals,[2] and state railroads. All of these must originate in acts of the legislature and for them the legislature must continue to make provision.

All such improvements cost money, as do all the other things the state undertakes. Hence the legislature must make provision for levying and collecting all necessary taxes.

The constitution provides most of the machinery for maintaining order in the state and enforcing ordinary state laws, but legislative action is necessary for some of it, as in the organization of the courts. In addition there come times in the history of every community when the ordinary machinery is inadequate, times of great political excitement, of labor troubles, or something of that kind. Provision has to be made for these extraordinary occasions, and so the legislature must provide for and maintain a military establishment of some kind. Education is a matter of gravest importance in the State, and grave duties devolve upon the legislature with regard to that.

Michigan originally had no land, as the title to all

[1] See, however, chapter XVII, paragraph 289, note.
[2] Michigan built the original "Soo" Canal.

our soil was in the United States. But partly by gift of the United States, partly by the operation of her tax laws, slightly perhaps by escheats, the state has acquired a considerable domain. Hence provision must be made for the care and disposal of this.

Certain political duties fall to the legislature. Senators and representatives must be reappointed every five years. Elections must be provided for and regulated, and occasionally new offices must be created. Administrative districts for many purposes may have to be made, and provision must be made for the incorporation and organization of various kinds of local and municipal governments.

219. Then the state of course stands in certain relations to the United States and certain duties devolve upon the legislature from that fact. Thus it must elect United States senators. "The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof"[1] and each state is to appoint "in such manner as the legislature thereof may direct," a certain number of presidential electors.[2] Article IV of the Constitution of the United States may also require some legislative action, to provide method of giving full faith and credit to public acts and records of other states, and to provide for the extradition of criminals.[3]

[1] *Constitution of the United States,* I., IV., 1.
[2] *Ibid.,* II., 1, 2.
[3] The functions of the legislature may be thus classified:

I.—*To provide for General Welfare.*

1. To make laws.
2. To levy taxes.
3. To provide for education and educational institutions.
4. To make provision for poor and unfortunate.
5. To provide for the public domain.

220. Here then is a very long though not exhaustive list of the things the legislature may do, many of them of the very first importance. We have already seen that, while the state has not all power, it is supreme in the exercise of the power it has. Hence in legislative power the legislature of the state is supreme. There is no other authority higher than it is, no power anywhere that can overrule its decrees. In the subjects it is entitled to deal with, its edicts are absolute, final. They are the supreme law, to be obeyed by all, until the legislature itself sees fit to change or abrogate them.

221. But supreme as it is, the legislature has not unlimited power. Its first great limitation comes from the Constitution of the United States. Most, though

6. To determine upon internal improvements and provide for public welfare generally.

II.—*To preserve Order.*

7. To make necessary police regulations.
8. To establish prisons and reformatories.
9. To provide for some kind of Military. (Constitution of the United States forbids keeping of standing army, I., X., 2. The military of a state is its organized militia.)

III.—*Political Duties.*

10. To create, as necessary, administrative districts.
11. To provide for organization and incorporation of local and municipal governments.
12. To create necessary offices.
13. To provide for and regulate elections.
14. To create senatorial and representative districts.
15. To provide for taking census.

IV.—*Duties arising from Relation to United States.*

16. Create districts for United States representatives.
17. Regulate such elections.
18. Elect United States senators.
19. Provide method for giving full faith and credit to Public Acts and records.
20. Provide methods for extradition of criminals.

not all, of the powers granted to Congress, a state legislature cannot exercise, and in Section X of Article I there are some direct prohibitions on the state. Other limitations, some of them important, are in the State Constitution. Much of Article IV is made up of these. We cannot now stop to enumerate the things thus forbidden to the legislature, but some of them deserve a moment's attention. The legislative council of the territory once authorized four successive lotteries for the benefit of the city of Detroit. Yet a generation later this clause was put in our Constitution: "The legislature shall not authorize any lottery, nor permit the sale of lottery tickets."[1] We are surprised to find in the constitution such clauses as: "Divorces shall not be granted by the legislature,"[2] "The legislature shall not audit or allow any private claim,"[3] "The state shall not subscribe to or be interested in the stock of any company, association or corporation,"[4] until we know that the Territorial legislature did all of these.[5] Section 1 of Article XV forbids the formation of corporations by special act, but unfortunately excepts municipal corporations. The clauses on religious liberty (found in Sections 39, 40, and 41, Art. IV) were first formulated by Jefferson for Virginia in 1779, and adopted by that state in 1785. Our own clauses are still partly in Jefferson's own

[1] Art. IV., 27.
[2] *Ibid.*, IV., 26.
[3] *Ibid.*, IV., 31.
[4] *Ibid.*, IV., 8.
[5] Section 22 contains an equally minute restriction which is systematically disregarded, the persons in power making use of a large class of state printing to retain the support of the state press, the very thing the clause was designed to prevent, and a use of power dangerous to public interests.

words.[1] Most of the restrictions, however, found in Article IV are the clauses of the bill of rights which in the first constitution made up the first article.

[1] See Bancroft, *History of the Constitution,* Vol. I., p. 216. Jefferson's original words were: "No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall suffer on account of his religious opinions or belief; opinion in any matters of religion shall in no wise diminish, enlarge, or affect civil capacities. The rights hereby asserted are of the natural rights of mankind."

CHAPTER XIII

THE EXECUTIVE

222. References

Constitution, Art. V.—Schouler, *Constitutional Studies,* Part III., chapter VI.—Hinsdale, *American Government,* chapter LII.

223. The chief executive officer of the state is of course the governor. He is elected for a term of two years, and he goes in and out of office with the legislature. His duties and powers are enumerated mainly in Article V. He has all the executive power of the state, except so far as the constitution places restrictions upon him. These restrictions are much greater than at first sight appears; for they lie not so much in the direct prohibitions of power imposed by the text of the constitution as in the whole organization of the government. Let us try and see how this is.

224. In Article V., though it is headed "The Executive," only one other officer is mentioned, the lieutenant governor. Ordinarily, however, the lieutenant governor is a legislative, not an executive, official. He is president of the senate, and through the appointment of committees, and the privileges of the floor,[1] he can exercise considerable influence on the course of lgislation. He is to succeed the governor in case of impeachment, removal, death, resignation, or absence from the state. He then becomes really governor, and thus the

[1] Art. V. § 14.

only executive power dealt with here is that to be exercised by the governor. But in Article VIII. five other state officers are provided for, each of which has charge of a great class of executive duties. All of these are elected, and for a term of two years. Thus, although all these duties belong to the executive department, the governor cannot determine who shall perform them, and as the officers are elected by the people and their duties are prescribed by law, he has no control over the way their respective departments are conducted. The governor is thus not the real head of the executive department. In reality that department has as many heads as it has officials. The governor has control of only one, though the most important, part of executive work. Each of the other heads of departments has independent control of another part and is not responsible to the governor but to the people who elect him. The executive work is thus divided up among six independent officials. Some things in the constitution seem at first sight to lead to a different conclusion. Thus in Article XII. Section 8, the governor is given power to remove any state officer. Were this power unlimited it might give real unity to the executive department and make the governor its real head. But the clause distinctly states that "The governor shall have power .... to remove from office for *gross neglect of duty,* or for *corrupt conduct in office,* or any other misfeasance or malfeasance therein," thus limiting his power to distinct cases of wrong doing.

225. Another clause in the constitution only serves to emphasize the decentralization of our state government. The governor "shall take care that the laws be faithfully executed." The governor of course cannot be all over the state at once to see to the execution of

the laws. For this purpose he would need an officer in every part of the state. The county is our natural administrative district and so the governor would need an official representative in every county in Michigan, clothed with something of his own authority, to see to the proper execution of the state laws. In England, and during all our colonial history, such an executive organization existed. The sheriff was appointed by the governor (in England by the king) and responsible to him. Such was the case also in Territorial Michigan. But the modern state has done away with this organization. The governor no longer appoints the sheriff and has no direct representative. The execution of state laws devolves entirely on local officials, although in emergencies the governor may be called upon for aid. Thus the executive department is shorn of most of its power and of its most important duties.

226. A curious comment on this decentralizing process is manifested in certain laws of comparatively recent origin. The failure to get state laws enforced, resulting from the lack of central authority for their enforcement, has brought about the creation of departments centering in the governor for the enforcement of special laws. The state oil inspector and his deputies, and the state salt inspector and his deputies in a measure illustrate this. But a case much more in point is the state game warden. He and his deputies are charged with the enforcement of a single set of laws to which local officials paid no attention. This is an awkward and expensive way of getting laws enforced, but strikingly illustrates the fact that the old principle of organization is necessary if state decrees are to be put in operation. As it is now there is everywhere much laxness in the enforcement of state laws, and different

communities manifest very different degrees of orderliness.

227. But the governor has important duties. He may grant reprieves, commutations and pardons,[1] except in cases of treason. In most cases if there is a vacancy in a state office or if there is one from the state in the United States senate, he makes or may make a temporary appointment to fill it, and he issues a writ for a new election in case of vacancy in the House of Representatives. He can call extra sessions of the legislature when he thinks best,[2] and must send to each legislature a message giving information as to the condition of the state and recommending such measures as he deems best.[3] Moreover, he has a limited veto power on the acts of the legislature. That is, every act passed by the legislature must be submitted to him. If he approves, he signs it and it thus becomes law. If he does not approve, he sends it back to the legislature without his signature and it does not become law unless passed by a two-thirds majority in each house.[4] But if the governor does not return a bill within ten days it becomes law without his signature, unless the legislature has adjourned, when it does not become law; the so-called pocket veto.

The governor is made commander-in-chief of the state military and naval forces.[5] Ordinarily this fact is of no importance. But in times of great disturbance, such as have afflicted some other states more than they have Michigan, our state military is our final reliance to maintain order, and the welfare and good name of

[1] *Constitution,* Art. V., 11.
[2] *Ibid.,* Art. V., 11.
[3] *Ibid.,* Art. V., 8.
[4] *Ibid.,* Art. IV., 14.
[5] Art. V. 4.

the state may depend much on the wisdom and courage of the governor, and the promptness of his action.

228. Of the other executive officials, little need be said. Their duties are mainly prescribed by law, and so can be studied in the compiled statutes. The secretary of state keeps the state seal and the state records and archives. The original acts of the legislature are deposited with him, and he attends to having the laws printed. In general he is the great clerk of the state. The state treasurer of course has charge of the state moneys. His duties also are mainly clerical, to take charge and give a correct account, of all the state funds. A few of them he collects, but most of them are collected and turned over to him by others. He pays them out only on warrants drawn by the auditor-general. The auditor-general examines all claims against the state in all cases regularly provided for by law. For the payment of these he draws his warrant on the state treasurer. All other claims must, before they can be paid, be allowed by the state board of auditors, composed of the secretary of state, the state treasurer, and the commissioner of the state land office.

The attorney-general is of course the law officer of the state. He represents the state in any suits in which it may be interested, is the legal adviser and attorney for the various departments, and appears for the people, or may appear, when necessary, in any criminal case before the state courts. He must also consult with and advise the prosecuting attorneys when requested.

The commissioner of the state land office of course has charge of the state lands, and of their sale when authorized by the state legislature.

229. The only other executive department is the one of education, and this again illustrates how far the

decentralization of our state government has gone. The head of this department is the superintendent of public instruction. The state raises and distributes each year about one-fifth of all the money used for the support of the public schools, that is, from one and a half to two million dollars. And one would therefore infer that it would have some direct voice in their control and direction. But as a matter of fact schools are left entirely to local initiative and management. Local school boards are entirely independent of the state superintendent, and the central department exercises no direct control whatever over schools, though indirectly the superintendent does much through teachers' examinations, the control of institutes, and other general influences which he can bring to bear on school authorities. The superintendent's immediate duties are mainly clerical. He gathers statistics, receives and makes reports, and figures out the apportionment of the state educational funds.

CHAPTER XIV

THE JUDICIAL DEPARTMENT

230. REFERENCES

Constitution, Art. VI.—Schouler's *Constitutional Studies*, Part III., chapter VII.—Hinsdale, *American Government*, chapter LIII.—Macy, *Our Government*, Part III.

231. The first section of Article VI. provides that there shall be one Supreme Court, Circuit Courts and Justice of the Peace Courts. The legislature may also establish Municipal Courts, and there must be a separate Probate Court in each county. These are all the state courts, as the last sentence of section 5 of this article says, "the office of Master in Chancery is prohibited," thereby preventing the reëstablishment of the state court of chancery which had been abolished four years before.

The organization of these various courts is in part prescribed in the constitution and in part left to legislative action. There had been a distinct Supreme Court under the Constitution of 1835, but this was now abolished. The state, exclusive of the Upper Peninsula, was divided into eight circuits,[1] each with its circuit judge, and these eight judges were to sit together to form the Supreme Court,[2] a plan that could not be abolished for six years.

This rather awkward arrangement lasted little longer than the constitution required. In 1857 a law

[1] *Constitution*, Schedule, § 29.
[2] *Ibid.*, Art. VI., §2.

was passed organizing a distinct Supreme Court of one supreme justice and three associates, a form, however, prescribed in the constitution,[1] to enter upon their duties upon the first of January, 1858. The judges were to be elected, not appointed; their term was eight years, only one to go out of office in any one year. Under this arrangement one Supreme Court judge was elected every second year. In 1887, by an amendment to the constitution, one judge was added to the court, so that there were five, and the term was lengthened to ten years. Now three more judges have been added and the term reduced to eight years. The judges receive a salary of $7,000 and are obliged by law to live in Lansing during their term of office.[2] There are two other officers, a clerk and a reporter, appointed by the court, and whose duties are obvious.

232. By the terms of the constitution the Supreme Court has almost no original jurisdiction,[3] that is, it is almost entirely an appellate court. But it has general superintending control over the inferior courts, and can issue such writs as are necessary to enforce its authority, such as writs of error, *habeas corpus, mandamus, quo warranto,* etc. As its name implies it is supreme. On all state questions, that is, questions arising under its laws or constitution, and not involving the Constitution of the United States, it is the ultimate tribunal. Its decisions are final and they cannot be revised or reviewed by any other court, state or national.

233. As has been mentioned, the constitution at first required that there should be eight circuits in the

[1] *Constitution*, Art. VI., § 2.
[2] *Comp. Laws*, § 186.
[3] Art. VI. § 3.

state.[1] The legislature, however, was given the power to increase the number[2] and there are now thirty-eight.[3] Each circuit is to have one circuit judge, but more are allowed in the *Third* (Wayne Co.), the *Tenth* (Saginaw), the *Seventeenth* (Kent) and the *Thirty-first* (St. Clair).[4] All the circuit judges are elected in the same year[5] for a term of six years. Both these and the supreme judges are elected at a spring election (the first Monday in April) in order to avoid as much as possible the political influences that prevail in the more general elections in November. Each circuit judge, and also each judge of the Recorder's Court in Detroit, and the judge of the Superior Court of Grand Rapids, is paid from the state treasury a salary of $2,500,[6] but the boards of supervisors in Wayne, Saginaw, and Kent counties, and also in the Upper Peninsula, are authorized to vote additional salaries.[7]

These Circuit Courts have what we may call complete jurisdiction. They have original jurisdiction over every kind of a case, of every grade.[8] The only exceptions to this are the exclusive jurisdiction in small causes granted by law to justices of the peace, and probate matters, which were once dealt with by courts of this kind, but now have a court of their own. Yet from both these courts cases can go to the Circuit Court on appeal.[9]

[1] Art. VI., 6. This clause was amended in 1889 so that the word "eight" no longer appears in it.
[2] Art. VI., 7.
[3] Besides two municipal courts of about the same rank.
[4] The first of these has six judges, the others two each.
[5] The first election was in 1857.
[6] *Comp. Laws*, § 165.
[7] Art. VI., 6.
[8] *Constitution*, Art. VI., 8, *Comp. Laws*, § 307.
[9] There are two municipal courts in the state of about the

Why are these called circuit courts? We have already seen how Henry II and his judges went from place to place to hold court. Circuit courts grew out of this custom and we have inherited them. Then our circuits are still for the most part real circuits. The judge still goes from place to place to hold court. As a rule a number of counties are grouped into a circuit and the judge holds court in each. The county is, as it has always been, the court district. When a circuit court is in session in a county, its jurisdiction is confined to cases originating in the county. Each county has its county seat, and its court-house where the court is held.[1]

As the Circuit Court is a court of record, that is, a court whose decisions can be cited and used in other courts and in other cases, it must have a clerk to keep a record of its proceedings. The county clerk is such clerk in each county. As the court can issue orders and decisions and pronounce sentences, and issue all the various writs necessary for the full assertion of its authority, it must have an executive or administrative officer to put its orders into execution, and this officer in each county is the sheriff. Our modern methods have added a new court official in the last few years,

same rank as circuit courts. One is the Recorder's Court in Detroit, with two judges. This court has some purely municipal functions, as it has to deal with violations of city ordinances (*Comp. Laws,* § 590), but it is also a criminal court with the criminal jurisdiction of the circuit court, but confined to cases arising within the city (*Comp. Laws,* §§ 579, 580). The Superior Court of Grand Rapids is a similar court for that city, but has both civil and criminal jurisdiction (*Comp. Laws,* § 630).

[1] There must be at least two terms of court a year in each county and in counties of over 10,000 inhabitants, four terms. —*Constitution,* Art. VI., 11.

the stenographer, who takes down in full the testimony in the process of a trial.

234. The lowest of the regular system of courts is the Justice of the Peace Court. The justice of the peace is a township officer. He is elected in the town meeting for a term of four years.[1] Each town has from one to four justices[1], but they do not sit together to form one court, as did the old justices of the peace in the English counties or the original justices in Detroit. Each holds court separately. The Justice's Court has no clerk as it is not a court of record. Its executive officer is regularly the constable. Its jurisdiction is confined to the township, but its processes may be served throughout the county. Both the justice of the peace and the constable are paid entirely by fees.

The Justice of the Peace court is our court for small causes, over which, up to a certain limit, it has exclusive jurisdiction. Its exclusive civil jurisdiction extends to cases where the value involved is not over $100, but it has jurisdiction concurrent with the Circuit Court up to $300.[2] Its criminal jurisdiction[3] extends to larceny first offense where the value of goods stolen does not exceed $25, assault and battery, wilful injury to sign boards, mile posts or boundary marks, malicious injury to horses, cattle, or other animals, trespass, and all other offenses punishable by a fine not exceeding $100, or by imprisonment in the county jail not exceeding theree months.[4]

[1] *Constitution,* Art. VI., 17.
[2] *Comp. Laws,* § 703.
[3] *Comp. Laws,* §§ 1019, 1058.
[4] Police courts are found in some of the larger cities; they are municipal courts of the rank of justice court. Sometimes they have only criminal jurisdiction, and sometimes both civil

235. The Justice's Court is provided for in the Constitution,[1] but there it is evidently intended simply as a township court. For the comparatively simple conditions of rural community it is perhaps as well adapted as anything that has so far been developed. But the state legislature, with a marked lack of constructive ability has grafted it on to the government of villages and cities, and for the complex conditions of urban life it is utterly unfitted. A properly conceived and properly organized municipal court of small causes is now greatly needed in Michigan villages and cities. Such a court should not have to depend upon the fee system for its existence; there should be no opportunity for collusion between the justice, constable and pettifogging lawyers, and the court should be entirely free from the vitiating influence of municipal politics.

236. Our only other court is the Probate Court. Its main business of course is to approve wills and administer estates of persons dying intestate. All estates possessed of by persons up to the time of their death must pass through the probate court before the title can pass to the heirs. The court also appoints guardians for minors, and other incompetent persons.[2] It has charge of all proceedings in connection with the insane and they can be assigned to asylums, state or private, only on examination and approval of the probate judge.[3]

and criminal. In these municipal courts, the fee system, the worst feature of the justice of the peace courts, is usually done away with, and the police justice is given a salary. The justices of the peace in the city of Detroit are also paid salaries, and the police court is given some of the extraordinary power usually exercised only by the grand jury.

[1] VI., 17.

[2] *Comp. Laws*, §§ 650, 651 f.

[3] *Ibid.*, § 1913.

The probate judge is elected at the November election for a term of four years.[1] He is paid by salary which varies according to population from a few hundred dollars in the small counties to $2,500 in Kent, and Saginaw and $5,000 in Wayne.[2]

237. In connection with the judicial system two institutions have come down to us kindred in nature and origin, hoary with age, and sacred for the inestimable service they have been to our race. These are the Grand Jury and the Petit Jury. The Grand Jury originated apparently in the time of Henry II and is thus very old. When Henry's judges went round from shire to shire to hold court, or from hundred to hundred, they were assisted in the discovery of wrong doers by bodies of "Sworn Men" in each shire and hundred. From this the functions of the grand jury have developed into their modern form. The business of the jury is to inquire as to the actual commission of suspected crimes, or if a crime has been committed to see if there is evidence against anyone sufficient for probable conviction. The jury is endowed with such inquisitorial powers as no other institution in our government. It can summon whom it chooses before it, require answers under oath to such questions as it chooses to ask, and subject to constitutional limitations[3], has full power to compel answers. If the jury believes it has found the person probably guilty of the crime, it draws up its report in the form of a charge, called an indictment. The grand jury in Michigan meets only when ordered by the circuit judge, and is usually under the direction of the prosecuting attorney.

[1] *Constitution*, VI., 13.
[2] *Comp. Laws*, §§ 2551, 2552.
[3] *Constitution*, Art. VI., 32.

If an indictment is found the case is then tried, usually by the Circuit Court. As has been said, the indictment is only the charge. The person indicted must still be proved guilty before he can be punished.

238. The Petit Jury, or Jury, as it is usually called, is also a body of sworn men. Its origin also traces well back into *Middle-Age* England, as it seems to have come down to us from a manorial court. This court was the court leet, made up of all the men of the manor, and having extensive, almost complete, criminal jurisdiction. But all the members did not sit in judgment in the cases that came before the court leet; instead they appointed a committee of twelve of their number by whom the verdict was given. Our court district is now the county and in principle at least our jury is still the same: it is a committee of the men of the county, and it is this fact that makes it one of our important institutions. For the verdict of the jury is the verdict of the men of the county, rendered, not by all, but by those selected in a special way as representative of them.

The first business in every dispute that finds its way into the courts is to ascertain what the facts of the case are. The process of doing this is usually the main part of the trial, and the inquiry is pursued under long established rules that have become customary in court practice. What the facts are is for the jury to decide, although in civil cases the parties may, if they choose, leave the matter to the court. The decision of the jury is called the "Verdict." If a person is accused of crime, the verdict is "Guilty" or "Not guilty," and in other cases the jury finds whether the facts as claimed are established or not. The jurors are under oath to judge the facts impartially, and their verdict, when

given, is final so far as the facts themselves are concerned.

The jury for our Circuit Court is still composed of twelve men. It is usually formed from the jury panel, as it is called, of twenty-four men, whose names are drawn, for each term of court, from a long list of names known as the jury list. The names on the jury list are taken from the tax rolls of the various towns and cities by a method carefully prescribed by law.[1] The whole jury law[2], in fact, is very long and very minute in its provisions, and aims to guard against every possible abuse of the jury system; but it has not been sufficiently strict to keep out political influences, some of them of the most vitiating kind.

239. All this makes it plain that our court system as we now have it is with us, like all our other institutions, a matter of inheritance. Although we have greatly modified and amplified it, yet all its main features have come down to us from very ancient times. But in some respects we have departed seriously from the historic principles that have hitherto underlain judicial development, and indeed are violating the very principle upon which our courts are really based.

240. As we have already had occasion to note, the first judges were the king's judges, and the justice which they administered was the king's justice. The king appointed them and for many centuries controlled their action. The same principle is illustrated in our colonial history, where the first judges were the governors and those associated with them in colonial administration. This close association of king and

[1] *Comp. Laws*, § 319.
[2] *Ibid.*, §§ 318-355.

judge, or colonial governor and judge, is no mere accident. We have already seen that both the executive and judicial are administrative functions; both have the same purpose of enforcement of the laws; they differ only in methods of procedure. Hence their close historic association is natural and logical.

This historic association is still in a measure preserved in our national constitution, for under that the judges are still appointed by our chief executive. But in the state it is completely broken. All our judges are elective.

241. Moreover it was found, as a matter of dearly bought experience in English history to be for the best interests of the empire that the judges should be independent and unhampered in the rendering of their decisions. This was secured by giving them a life tenure of their office and the passage of the bill by which this tenure was secured was one of the last great triumphs in the struggle over the English Constitution during the Stuart period, a triumph on the side of justice and freedom. This principle also is carefully preserved in the National Constitution, for United States judges are appointed for life. But this again the State Constitution violates. Our judges are elected, and elected for short terms. Every few years they must turn their attention to political conventions and seek renominations, and then seek reëlection, and they must always be subservient to the influences that control political organizations. This is at all times a grave interference with the independence of the judges, and some serious abuses have come from it.

But when the judges were the king's judges and when they administered the king's justice, the king stood for the sovereignty of the English nation, and

the judges were thus administering the national laws. The same principle holds for our state courts now. We have but one Supreme Court for the state, but we have many Circuit Courts, each for a certain portion of the state. Nevertheless the circuit judges have to do entirely with state laws; their duty is the enforcement of those laws. They have no local functions, no functions that are not connected with general state administration. Hence their appointment should logically come from some general state authority. This was the case when the judges were appointed by the king, or by the colonial or territorial governor. But now the judges are selected by the people of their respective circuits, that is, by a small portion of the whole state—whose authority alone they represent.

242. The general function of the courts is, as we have seen, the enforcement of the laws of the state. Only disputes and questions arising under the state laws could thus be subject to judicial action, and in general this would be true of the court system anywhere. Its main function is to enforce the laws as they are, as it finds them. But the peculiar organization of our American government brings some questions before our courts which courts in other countries do not have. Our state government is based on a written constitution, and that constitution is a grant of power to the various departments, and is also their limitation. The fact has already been stated that no department can exercise power withheld by the constitution, and this raises a peculiar question: when any department has taken action, is that action within the authority granted? As we have already seen, the initiative in government is mainly with the legislature; hence the question will mainly arise with reference to

legislative action. In the passage of any act, has the legislature, or has it not, exceeded its authority?

243. Evidently enough if a restriction is placed upon any department of government, there should be some way of enforcing it. Merely to write in the constitution that the legislature, or any other department, shall not do so and so would be entirely useless. A restriction without the necessary power behind it would command no respect and would not be observed. But how are such restrictions to be enforced against the coördinate departments of a supreme government? Where is the power to be lodged that shall hold the legislature or the governor in restraint? The solution of this problem came a little before the adoption of the American Constitution. In New Jersey in 1780 the Supreme Court declared an act of the legislature unconstitutional and void, and this decision was acquiesced in by the legislature and the people of the state.[1] In 1782 the Supreme Court of Virginia decided, though in very cautious language, that the house of representatives had exceeded its authority under the constitution in attempting to pardon a man condemned to death for treason.[2] In Connecticut in 1785,[3] in Rhode Island,[4] and in North Carolina[5] in 1786 the courts overruled acts of the legislature on the grounds that they were unconstitutional. The precedents thus established were quickly followed. When the National Constitution was framed the courts were given

[1] Holmes *vs.* Walton, New Jersey, 1780. See *American Historical Review*, Vol. IV. (1898-9), pp. 456-469.
[2] Commonwealth *vs.* Caton, *Virginia Reports*, 1782.
[3] Symsbury Case, *Kirby's Reports*, 444.
[4] Trevett *vs.* Weedon, *Rhode Island Reports*, 1786.
[5] Bayard *vs.* Singleton, *North Carolina Reports*, 1787.

this function,[1] and in all the states the courts now exercise it. Hence our courts must consider, not simply questions arising under the laws of the state, but also those arising under the constitution. They must decide whether laws, and even acts of the executive, are constitutional or not, and if unconstitutional, they are nullified by the action of the court. This function is peculiarly American, and in a certain sense, makes the Supreme Court, by which the ultimate decision must be rendered, superior to any other department of government.

[1] *Constitution of the United States,* Art. III. § 2.

CHAPTER XV

LOCAL ORGANIZATION

244. REFERENCES

Howard, *Local Constitutional History of the United States,* Part I. and Part III.

Town.—Green's *Making of England,* chapter IV.—Medley, pp. 321, 422-433.—Stubbs, Vol. I., pp. 438, 667, 88 f., 97, 43 f.—Montague, pp. 8, 9, 23, 24, 35, 51, 54, 63, 70, 104-107, 143, 144, 225.—Seebohm, *English Village Community.*

Parish.—Montague pp. 8, 105, 106, 222-224.—Macy, *English Constitution,* chapter VIII.—Stubbs, Vol. I., pp. 91, 247.—Medley, pp. 402, 429, 417.

County.—Traill, Vol. I., pp. 138, 145, 396, 397; 137, 399.—Taswell-Langmead, pp. 17, 18, 38, 39, 159, 160, Note 1.—Ransome, p. 6.

Constitution, Arts. X. and XI.—Miller's *Compiled Laws of Michigan* (1898), and the volume of Public Acts for each session of the Legislature since, viz., 1899, 1901, 1903.—*Territorial Laws for Early Organizations in Michigan.*—Woolsey's *Political Science,* Part III., chapter X.—Hinsdale, *American Government,* chapter LV.—Macy, *Our Government,* Part I., chapters I. and II., and all of Part II.—De Fonblanque, *How We Are Governed* (London, 1880), Letter IX.—Delos F. Wilcox, *Municipal Government in Michigan and Ohio* (Columbia University, New York, 1896.) *The Study of City Government,* New York, 1897.

I. Rural

245. We have now studied the general machinery of our government, and have seen that for administrative purposes the state needs to be divided into districts of convenient size. Here then is one reason for subdivision. But a large community like a state is necessarily made up of many smaller ones, which come to have somewhat distinct characteristics, and wants, and

interests, and which, according to the historic principle of our government,[1] should be allowed to manage their own affairs. In this lies another reason for subdivision, as each little community must, for certain purposes, be a political unit, and be given the privileges of local self-government. But the two reasons are not antagonistic, and do not give two sets of districts and of institutions. The little communities that are given the privilege of self-government are made the administrative districts of the general government, and are thus organically related to each other and to the state.

246. While the state is divided up into districts in a number of ways, and for a variety of purposes, such as judicial circuits, representative and senatorial districts, etc., it has but three subdivisions for administrative and local government. These are counties, towns, and municipalities,[2] the first two rural, the last urban. Of these the county is, for state purposes, the usual administrative district, but the town is, as we shall see, the primary political unit, and the one we shall consider first.

247. The town has to be looked at in two ways, geographically and politically. Geographically the word is given its meaning by the laws of the United States. Michigan, like nearly all the country except the original thirteen states, was mainly an unsettled wilderness when it first came into American possession. The title to its soil was in the government of the United States. When the United States came to sell or give the land to settlers, for the purpose of description a uniform plan of survey was adopted, which Michigan fully illustrates.

[1] See chapter VI., *supra.*

[2] The student should notice the narrow meaning given to this word, which is not quite in accord with present usage.

Two lines were first laid out in the state, a north and south line called the Meridian, and an east and west line called a Base line. From their intersection the state was surveyed off into squares six miles on a side. Such a square is a town or township. The tiers of towns thus formed running north and south are called ranges, and each range is designated as one, two, or three, etc., east or west, of the meridian. The towns are further designated by their number north or south of the base line, and by the two designations are definitely located. Our meridian, by a sort of historical accident, is the north and south line running through the mouth of the river Auglaize, and our base line is the boundary running between the second and third rows of southern counties.[1] Townships are themselves divided into square miles, or sections, always numbered in the same way, so that any tract of land can always be definitely located by town, section, and fraction of a section.

248. This is the geographical township. The civil town is another thing. Though in extent of territory it may be the same and usually is, it is not the territory, but the people that constitute it. Some geographical towns, however, have so few people that in political organization several are united,[2] and for the opposite reason a geographic town may be divided.[3]

It is primarily the civil town which we are now con-

[1] As meridians approach each other the towns would grow narrower towards the north. Hence a correction line, or secondary base line is run. One is just north of Saginaw Bay.

[2] See, *e. g.*, Stronach in Manistee County. Oscoda County is composed of 16 geographic towns, but has but four civil towns.

[3] *E. g.*, Tecumseh and Clinton in Lenewee County.

sidering. Such a town is, as a rule, composed of the people living within one of the six mile squares into which the United States surveyors originally divided the state. Such a body of people is a corporation, having the rights and privileges conferred upon it by the constitution and laws of the state and subject to the duties thereby imposed.[1] As a corporation it can sue and be sued, purchase, hold, and dispose of real and other property, so far as is necessary for town purposes, and perform the political functions placed in it by law.[2]

The main power of the town is placed in the people thereof. These assemble in town meeting at least once a year.[3] Here they elect town officers,[4] make such orders and by-laws as are deemed best for local regulation[5] and vote to raise such sums of money as are necessary for defraying regular town expenses, or for such special purposes as to build a highway, a bridge or a town-hall.[6]

249. Townships were first organized in Michigan by a law passed by the territorial legislature in 1827.[7] According to this law the town meeting was to be the first Monday in April, and the town officers were a supervisor, a clerk, three to five assessors, one collector, two overseers of the poor, three commissioners of highways, as many constables, fenceviewers, and pound-masters as the electors wished, and one overseer of highways (pathmaster) for each road district. By

[1] *Constitution*, Art. XI., 21. *Comp. Laws*, § 2268.
[2] *Ibid.*, §§ 2269-2274.
[3] *Ibid.*, § 2275.
[4] *Constitution*, XI., 1. *Comp. Laws*, §§ 2269, 2270.
[5] *Ibid.*, §§ 2272, 2273.
[6] *Ibid*, §§ 2269, 2270.
[7] *Territorial Laws*, Vol. II., p. 317.

subsequent acts, the town was made a body corporate and a great many towns were laid out.[1]

Town organization has changed but little since these first laws. Now the supervisor has become the assessor and the overseer of the poor, and there are no longer separate officers for these duties. There is but one commissioner of highways, and the *collector* is called the *treasurer*. The pathmasters are now the fenceviewers, and two school inspectors and from two to four justices of the peace have been added. All except the pathmasters are chosen by ballot. The term of office is regularly one year, but the school inspectors are chosen for two years (one each year) and the justices of the peace for four. The duties of the officers are sufficiently obvious. The supervisor, the clerk, and the two eldest justices[2] constitute the *Town Board*. Their chief business is to audit the accounts of the town, and to examine the books of the treasurer. There is also a board of review, of three members, for hearing complaints against, and correcting inequalities in, the assessment roll of the supervisor.[3]

250. When local government first sprang up in New England, it was simply the transplated parish government of Seventeenth Century England. The New Englanders set up the parish with the open vestry, but changed its name to town. The open vestry thus became the town meeting, and the vestry clerk the town clerk. Constables, fenceviewers (haywardens), pathmasters (waywardens) and poundkeepers were all parish officers, and are really very ancient. Thus petty though they seem, these officers are of great historic

[1] *Territorial Laws*, pp. 477, 481.
[2] That is, whose terms will soonest expire.
[3] *Comp. Laws*, §§ 851-2.

interest, as they signify the continuity of our institutions, and the permanence of their essential character, through long ages of Anglo-American history. Indeed the town is the oldest of our institutions. With the first dawn of English history it emerged from the dark night of prehistoric times with something like its present characteristics. And the constable is its oldest officer, the oldest of all officials.

Our Michigan town traces back through New England to this ancient organization. But New England at first had no county, while in New York, during the close of the Seventeenth and beginning of the Eighteenth Centuries, a town government was developed, partly indigenous, partly copied from New England, closely related to county government. In 1703 a law was passed giving the distinguishing characteristics to this town-county system. Each town was to elect a supervisor, who was to be a member of the county board of supervisors, and this board was to have the general functions which it still exercises. A large portion of our early settlers came from New York, and this New York feature was accordingly adopted. Our supervisor is a member of the county board, and our town is the New England town as it has come down to us through New York.

251. Geographically our county is an aggregation of towns. It is composed of 16 (4x4) or 20 (4x5)[1], or less often of some other number. As a matter of fact, however, counties were organized before towns, but not before the United States surveys.

We have already seen that the county or shire originated in England well before the Norman Conquest. Yet it was not transplanted to this country with our

[1] *Constitution*, X., 2.

first settlements. Instead it grew naturally out of colonial needs. In both Virginia and Massachusetts the county was organized in the same year, 1643, and for the same purpose. It became a necessity for the proper administration of justice. In both cases it originated as a court district, and the court preceded the county. Once organized, the county acquired other than judicial functions, such as laying out of roads, building bridges, levying taxes, authorizing and auditing county expenses, licensing taverns and ferries, etc. These functions were all exercised by the county court, which also had charge of probate matters. In Massachusetts this early court consisted of three judges, one a member of the governor's council, and the other two, called associates, elected in the county.

252. By a peculiar coincidence the real beginning of county organization in Michigan was by a law passed by the governor and judges October 24, 1815, organizing a county court, although there was as yet no county. This court was composed of three judges (a chief-justice and two associates) appointed by the governor, and having a jurisdiction quite similar to that of early Massachusetts, civil to $1,000, criminal except for capital offenses. A few days later (November 3) a sheriff and coroner were added to county officials[1], and the first county, Wayne, was established, by proclamation of Governor Cass, November 21, 1815.[2] For nearly two years there was no other. Then Monroe was organized,[3] and a little later, Macomb.[4] The new counties necessitated the further development of county

[1] I *Territorial Laws*, p. 220.

[2] *Ibid.*, p. 323.

[3] July 14, 1817. II *Territorial Laws*, p. 792.

[4] January 15, 1818. Oakland and St. Clair followed in 1819 and 1820. II *Territorial Laws*, pp. 796, 798, 800.

government, and in 1817 the justices of the county court, together with the justices of the peace in the county, were authorized, under the head of "General Quarter Sessions of the Peace," to levy county taxes and allow and audit county expenses.[1] This court was afterwards authorized to open and establish county roads, license taverns and ferries, divide the county into townships, etc.[2] Thus for a brief period our whole county government was an almost exact reproduction of that of early Massachusetts.

253. But the county court was destined to retain only its judicial functions. In 1818 "The General Quarter Sessions of the Peace" was abolished, and its functions passed over to a board of three commissioners for each county, appointed by the governor.[3] To this commission was also given power to establish roads, build bridges, erect and care for county buildings, fix county salaries, and divide the county into townships; and it was to have charge of the county poor, and general supervision of the county. The list of county officers was meantime increased by a prosecuting attorney[4] a clerk, and a treasurer. In the same year also a Probate court was established in each county, with a Judge and Register appointed by the governor.[5]

Thus by 1818 the county was pretty well organized. It was the smallest local and administrative district, and the unit for taxation, until the organization of towns in 1827. But with the towns the board of supervisors came into existence, at once took the place of county commissioners, and succeeded to all their

[1] II *Territorial Laws*, p. 109.
[2] *Ibid.*, p. 118.
[3] *Ibid.*, p. 130.
[4] I *Territorial Laws*, p. 503.
[5] *Ibid.*, p. 341.

powers and duties,[1] thus giving the county its modern form.

254. It is not necessary to follow the history of the county further. It is, of course, "A body politic and corporate for the following purposes, that is to say: To sue and be sued; to purchase and hold real and personal estate for the use of the county; to borrow money for the purpose of erecting and repairing county buildings, and for the building of bridges; to make all necessary contracts, and to do all other necessary acts in relation to the property and concerns of the county,"[2] and the board of supervisors is of course the chief governing body. It is not necessary to enumerate their powers further than has already been done.[3] Some officers have been added; there are two coroners instead of one, a register of deeds, a surveyor, and such notaries public as the governor may appoint.

255. Of the county officers the sheriff has always been the chief. The office originated apparently with the county itself; he was appointed by the king, to enforce the king's decrees and look after the king's interests. Originally in America he was universally appointed by the governor, as we have seen he was in Michigan. His main functions always have been as agent of the governor, or of the colonial or state courts, to see to the enforcement of colonial or state laws. His functions are still the same. His business is the enforcement of state laws, and he is the administrative officer of the state courts. As conservator of the peace, the power of the state is behind him; he has the authority to pursue criminals, check disorders, and suppress

[1] II *Territorial Laws*, p. 325.
[2] *Comp. Laws*, § 2441.
[3] *Ibid.*, §§ 2484, 2487, 2496, 2494, 2486, 2490, 2495.

riots, and for such purposes he may call upon as many citizens for assistance as he may think needful. When so called upon each one is bound by law to render the service required. But though thus a state officer, instead of standing for the state as a whole and being appointed by and responsible to its chief executive, he is elected as a local official, and largely subject to local control, a fact that greatly impairs his efficiency as an administrative officer.[1]

256. The prosecuting attorney is also a very important officer. He acts as prosecutor before the courts, in the name of the people, in the enforcement of state laws. He is thus again a state executive officer, and when the office was first established in Michigan, was appointed by the governor. But like that of the sheriff this office has now become a local elective one, and with similar results.[1]

It is not necessary to follow in detail the duties of other officials, as most of them are sufficiently obvious. The regular term of county officers is two years. The sheriff cannot hold office for more than four years out of six, and is paid by fees. The others receive salaries, fixed, as a rule, by the board of supervisors.

II. Urban

257. Town and county governments are mainly designed for rural communities, and for such are excellently adapted. In fact, in the peculiar combination of forms we have here, Michigan is a pioneer, and no better organization has ever been developed. But urban life brings different conditions for which these

[1] Under the United States government, similar officials, district marshals and district attorneys, are appointed by the president, and United States laws are much better enforced than are state laws.

rural institutions are not well adapted. For when men live close together they can do many things by joint action that are impracticable when houses are far apart; they can build sidewalks, for example, and erect water works and lighting plants. Then new necessities arise such as public sewers, and public conveyances, and owing to their increased use, pavements on the streets. Increased restrictions are needed, as many things cannot be done in a crowded city that are harmless enough in the country. Then, too, the worst forms of evil are apt to develop where population is thickest, and this fact gives rise to distinct problems of government with which the rural community never has to deal. All these considerations enable us to see that urban government is much more complicated and difficult than rural. Villages and cities are thus given separate incorporation, and although political corporations of the same general class as towns, their organization will need to be more complex, and their powers more extensive.

258. Between villages and cities the only essential differences arise from the fact of size. The village is the smallest of urban communities, the one in which the conditions are least complicated, and so in form it is the simplest of urban governments. In fact village conditions most nearly approach those of the town, and the spirit and character of its life are but little different from the life of the country about it.

259. The village must accordingly first be distinguished from the town. In order to be incorporated, that is, to be a village in the legal sense, a community must have at least 300 people within a territory of not less than one square mile.[1] Incorporation is under general law, and application must be made to the

[1] *Comp. Laws*, § 2685.

board of supervisors.[1] The necessary officers are a president and six trustees, who together form the village council, a clerk, a treasurer, and an assessor.[2] All these officers are elective and village elections are held on the second Monday in March.[3] The trustees hold their offices for two years,[4] all the others for one. The president may appoint[5] or remove[6] a marshal and a street commissioner, and such other officers as the council may authorize.[5] As chief executive officer[7] of the village, he has the powers of a sheriff as conservator of the peace.[7] The council is the legislative body of the village; makes the village ordinances,[8] levies the village taxes,[9] controls the village moneys,[10] and audits the village accounts.[11] Village ordinances may be enforced by fines and imprisonments not exceeding one hundred dollars or ninety days.[12] From all this it appears that the village government in form closely resembles town government, from which in fact it was derived.

All the authority a village has is delegated to it by the state. It is not necessary here to enumerate its powers; a few of them will indicate their character. Thus it may enact ordinances to restrain vice and immorality, to punish vagrants and disorderly persons, to abate nuisances, to preserve the public health, to regulate billiard halls, to suppress saloons and gambling, and to license auctioneers and peddlers.[13] It may provide a pound,[14] establish parks,[15] erect public buildings,[16] and

[1] *Comp. Laws*, §§ 2691-2.
[2] *Ibid.*, § 2699.
[3] *Ibid.*, § 2714.
[4] *Ibid.*, § 2702.
[5] *Ibid.*, § 2700.
[6] *Ibid.*, § 2729.
[7] *Ibid.*, § 2727.
[8] *Ibid.*, § 2748.
[9] *Ibib.*, § 2852.
[10] *Ibid.*, § 2752.
[11] *Ibid.*, § 2754.
[12] *Ibid.*, § 2756.
[13] *Ibid.*, § 2769.
[14] *Ibid.*, § 2771.
[15] *Ibid.*, § 2774.
[16] *Ibid.*, § 2772.

require the building of sidewalks.[1] It may build sewers,[2] pave streets,[3] erect wharves,[4] and establish ferries and markets.[5] It may own and operate water-works and lighting plants, furnishing water and light for both public and private use.[6]

260. When communities grow large enough a more complex organization is needed. The limit fixed by law for a change in form of government is a population of 3,000.[7] When a village has attained to this size, it may become incorporated as a city.[8] Cities in other words must have 3,000 or more inhabitants. Cities again are classified according to population. The laws of Michigan contemplate four classes, but they provide for only one. All cities having a population of not more than 10,000 people are called cities of the fourth class, although there are no other classes, and for these there is a general law of incorporation.

261. According to this law the first thing that distinguishes cities from villages is that the former are divided into wards. The smallest ones are to have three wards; those of 5,000 people may have four wards; and larger ones, one more ward for each additional 2,000 of population.[9] In each ward there are to be elected two aldermen, one supervisor, and one constable, the aldermen for two years (one each year) the others for one. The general city officers are mayor,[10] clerk, treasurer, whose term is one year, and two justices of the peace, whose term is four years,[11] all of

[1] *Comp. Laws*, § 2775.
[2] *Ibid.*, § 2792.
[3] *Ibid.*, § 2785.
[4] *Ibid.*, § 2803.
[5] *Ibid.*, §§ 2808, 2809.
[6] *Ibid.*, § 2890.
[7] *Ibid.*, § 2901.
[8] *Ibid.*, §§ 2957, 2970.
[9] *Ibid.*, §§ 2965, 2977.
[10] *Ibid.*, § 2988.
[11] *Ibid.*, § 2993.

course elective. In addition the mayor may appoint for the term of a year,[1] a city attorney, a marshal, a street commissioner, a surveyor, an assessor, a chief of the fire department, and such other officers as the council may provide[2] for.

The general character of the duties of these officers is obvious enough to need little comment.

The mayor is, like the village president, chief executive, and has the same powers as conservator of the peace. But he is not allowed to remove his own appointees, a restriction which may hamper him in carrying out his policy, and takes away his direct responsibility. The mayor and aldermen together make up the city council, of which the city clerk is clerk,[3] which stands in the same relation to the city as the village council to the village, and deals with about the same subjects.[4] The powers of the city council, however, are greater. The supervisors are assessors, send names for the jury lists to the county clerk,[5] and are members of the board of supervisors of the county.[6] Justices of the peace have the same jurisdiction as in townships,[6] and may also try cases arising under the ordinances. Ordinances may be enforced by penalties not exceeding a fine of $500 or imprisonment for six months, or both.[7]

Cities are also authorized to establish and control lighting plants,[8] water works,[9] fire departments,[10] and city police.[11] Each city, unless its citizens vote other-

[1] *Comp. Laws*, §§ 2991, 2994.
[2] *Ibid.*, § 2990.
[3] *Ibid.*, §§ 3023, 3027, 3062.
[4] *Ibid.*, § 3117.
[5] *Ibid.*, §§ 3048, 3049.
[6] *Ibid.*, § 3050.
[7] *Ibid.*, § 3083.
[8] *Ibid.*, § 3288.
[9] *Ibid.*, § 3247.
[10] *Ibid.*, § 3277.
[11] *Ibid.*, § 3116.

wise, must also have a board of public works of five members, appointed by the mayor for a term of five years, one going out of office each year.[1] This board has charge of the water works, lighting plant, and public improvements, subject, however, to the control of the common council.

Each city is by this general law a separate school district, but the school district is a distinct corporation.[2] The school board consists of six trustees, elected on a general ticket, two each year, for a term of three years. The school election is held separately from the city elections on the first Tuesday of September each year. The school board in addition to having charge of the schools, must maintain a school library, which may, however, be incorporated with the city library.[3]

262. So much for cities of the fourth class. For larger cities there is no general statute. They will accordingly have the organization, privileges and powers named in their respective charters. As these charters are all different, no general description of them can be given. But the larger cities are of course divided into wards, all have mayors and common councils, clerks and treasurers. Some of them have city attorneys, and some a distinct auditing department, the head of which in Detroit is called the city controller.

In the larger cities the principle of decentralization is carried to the greatest extremes. The various departments of city administration are entrusted to distinct boards, the members of which are usually appointed by the mayor, with or without the approval of the council, for a definite term of years, and removable only after a complicated legal process. The city of

[1] *Comp. Laws*, §§ 3267, 3269. [2] *Ibid.*, § 3348.
[3] *Ibid.*, § 3338.

Detroit illustrates this plan more fully than any other in the state. It had until recently eight different boards, or commissions. One of these, the school board, however, is common to all cities, elective, as primary in its character as the common council, and as independent in its action. The others were, the board of public works, the board of police commissioners, the board of park and boulevard commissioners, the board of water commissioners, the board of health, the board of poor commissioners, and board of building inspectors.

These boards consist of three, four, or five members, generally nominated by the mayor and approved by the council, thus insuring that the appointments shall be political, and appointed for a definite term, usually of as many years as there are members of the board, so that one may be appointed each year. As these boards are independent by their very organization, the administration of city affairs lacks unity of purpose and policy, and when things go amiss, there is no one upon whom responsibility can be placed. Besides the mayor becomes a mere figure head, with no power to shape the policy of his own administration, and with little authority of any kind.[1]

263. There is also another board found in some of the cities, though not an administrative one. This is called the board of estimates. As a legislative function, it would be the duty of the common council to levy the city taxes, and of the school board to levy the school taxes. But where a board of estimates exists all esti-

[1] Three of the boards, public works, police commissioners, park and boulevard commissioners, were abolished in 1901, and replaced by single commissioners in each case. Though brought about by political manipulation the gain in efficiency is manifest.

mates for city or school expenses must be passed upon and allowed by it before the amounts can be spread upon the city tax rolls. Such boards were of course designed to check extravagance on the part of city legislative bodies, but their action has always been disappointing. They have sometimes operated to cripple the public schools, and often greatly hamper them. But they have seldom if ever headed off the political schemes out of which municipal extravagance really arises.

CHAPTER XVI

EDUCATION

264. References

Constitution of 1835, Art. X.—*Constitution of 1850,* Art. XIII.—*Territorial Laws of Michigan,* for school laws of Territorial Period.—A. C. McLaughlin, *History of Higher Education in Michigan,* Bureau of Education, Washington, 1891.—Daniel Putnam, *History of the Michigan State Normal School,* Ypsilanti, 1899.—Daniel Putnam, *Primary and Secondary Education in Michigan,* Ann Arbor, 1904.—Reports of the Superintendents of Public Instruction.Much valuable material is found in that of Superintendent Francis W. Shearman for 1852.—Hinsdale, *American Government,* chapter LVI.—Cooley, *Michigan,* chapter XVI.

265. During the years of the French régime, none but good Catholics were allowed anywhere in New France. Education was an affair of the Church, and everywhere in Canada was entirely in the hands of the priests. The common people here remained very ignorant, as nothing beyond mere religious instruction was given. But the children of the more influential French families were taught to read, to write, and to cipher. There could be of course no such thing as a public school system.

266. When the English came, English private schools were established, but it was not until the coming of the Americans that the subject of education became of more importance. Yet the first impulse to something better came from one who may be considered to represent the old régime rather than the new. For Father Gabriel Richard, who came in 1798

as priest of St. Anne's,[1] established in 1804 a school for girls and later another for boys. Both were destroyed by the great fire, but he succeeded in maintaining a number of schools of lower grade. American private schools were also in eixstence from 1802 on. One worthy of note was a classical school kept from 1812 to 1818 by a Mr. Payne and the Rev. John Montieth. But our public school system came from none of these, and enough has been said to indicate the educational conditions that preceded it. Michigan was no exception to the general fact that under any private school system the mass of the people remain uneducated.

267. While Michigan was still under a foreign flag, a measure was adopted by the Congress of the United States[2], setting aside section 16 of every township for the support of common schools. Accordingly on the 26th of March, 1804, an act was passed reserving section 16 for school purposes in this portion of the Northwest Territory, although the lands were not deeded over until 1828.

In 1804 also Congress made a grant of a different kind. It gave one township of land for the support of a university. In 1817 the Ottawa, Pottawatomie and Chippeway Indians gave three sections for the same purpose, and in 1826 Congress added another township, thus giving a total endowment of 48,000 acres.

268. The first act for the establishment of the common schools of Michigan was passed by the governor and judges in 1809.[3] The three judicial districts into which Governor Hull had divided the territory were

[1] This was the original church established at the founding of Detroit.

[2] Journals of Congress, IV., 512. Bancroft, *History of Constitution*, Vol. I., p. 181.

[3] II *Territorial Laws*, p. 90.

to be subdivided into school districts. Each year the overseers of the poor were to take a census of the children between four and eighteen years, and the district judges were to raise by tax not more than $4 nor less than $2 for each child, to be apportioned to the schools in proportion to the amount they themselves had raised. This excellent law does not seem to have produced much result and was omitted from the Cass Code published in 1816.

269. Nearly twenty years later (1827) another law was passed[1] providing that in a town of fifty families there should be instruction in the English or French language, in "Arithmetic, orthography and decent behavior," for six months each year; in one of a hundred families, for twelve months; in one of 150 families, one teacher for twelve months, one for six; in a town of 200 families there must be in addition a grammar school providing instruction in Latin, French, and English languages. This portion of the law reminds us of the first school law in Massachusetts passed nearly 200 years before, after which it was evidently modeled, but as its provisions were easily evaded, it accomplished nothing.

But another portion of the same law began the actual shaping of our school system. It provided for township school inspectors to examine and license teachers and visit schools; for township taxation, and for division of the town into districts; for a district meeting which should vote a tax for the erection of a school house, and should elect three trustees, who should have charge of the building and of the school; and should hire the teacher. Two years later,[2] the

[1] By the Legislative Council, II *Territorial Laws*, p. 72.
[2] II *Territorial Laws*, p. 770; III., p. 1012.

first part of this law was repealed, the required term of school was reduced to three months, each district was required to build a school house, and provision was made for a rate bill; wood, as well as tuition, to be furnished *pro rata.*

270. This act of 1829 contained one very important feature. It provided for the appointment by the governor of a "superintendent of common schools," the beginning of our office of superintendent of public instruction, the first office of the kind in the whole country. His duties were to prevent trespass and devastation of the public school lands, to receive reports from each school district, and make an annual report to the legislative council. At first his salary was $25 a year and expenses.

271. In 1817, the year in which the Indians made their grant for a college, the governor and judges passed "An act to establish the Catholepistemiad, or University of Michigania." It provided for thirteen didaxiim (professorships), such as didaxia of Catholepistemia, didaxia of Anthropoglossica, didaxia of Physiognostica, etc.[1] Fifteen per cent. of the public taxes were devoted to the support of the institution, and the governor, in whom the power was vested, appointed the Rev. John Montieth president, and Father Gabriel Richard the only other professor. Funds were raised by subscription, and a building was erected in Detroit. But the university was not yet opened, as there were no students in Michigan prepared for college. A preparatory school was started in Detroit, and one or two branches elsewhere. In 1821 a new law replaced the fantastic Catholepistemiad law,[2] giv-

[1] This Act is found in II *Territorial Laws,* p. 104.

[2] I *Territorial Laws,* p. 879.

ing us the name "University of Michigan," and placing the institution in charge of a board of twenty-one trustees. But the 15 per cent. clause was omitted, the university was without funds, and no further progress was made during territorial days.

272. When Michigan became a state, though little had been actually accomplished in the way of education, the opportunities were such as seldom come to any people, and they were so because of the great land grants now available. The times were ripe for the development of a magnificent school system. But wise guidance was necessary, and a wise man was needed at the head of educational affairs. The new state was fortunate in having the right man, in the person of the Rev. John D. Pierce, an earnest and broad spirited missionary working in the western counties (Jackson, Calhoun, Eaton). Through a friend his ideas guided in the formation of the educational clauses of the constitution; the superintendency of public instruction was made a constitutional office,[1] and to the office thus created Mr. Pierce was appointed. Under his guidance Michigan developed the most complete educational system then in America, and one used as a model by nearly every state that has since come into the Union.

The new superintendent wished the public schools to be ample for all the youth of the state: "The obect is universal education, the education of every individual of all classes." He planned to have the state furnish all grades of education from the lowest to the highest. He wished the schools to be free, and attendance compulsory, and wanted a state normal school. It was

[1] *Constitution of 1835,* Art. X. § 1.

more than half a century before all his ideas were realized.

273. In the constitution clauses were placed requiring that the money derived from the sale of school and university lands, should constitute a perpetual fund,[1] the interest only to be expended; that the legislature should establish a system of common schools so that school should be kept in each district at least three months in each year,[2] and that it should establish libraries so that there should be at least one for each township.[3] The territorial school law was then revised.[4] The management of educational lands was taken from local officials and placed in the hands of the superintendent, where it remained until the organization of the state land office. By slight modifications the school district was given its present form. The three trustees were to be, respectively, moderator, assessor, and director, and their duties were carefully defined, substantially as they now are.[5] The form which Mr. Pierce gave to the district schools has remained. The only change of importance is that school inspectors no longer examine teachers, or inspect schools, and are practically without functions. There is now a county school commissioner, elected at the spring election for a term of four years, who inspects the schools, and two county examiners who with the commissioner examine and license teachers, under the general control of the superintendent of public instruction.

274. There were few schools when statehood

[1] *Constitution of 1835*, Art. X. §§ 2, 5.
[2] *Ibid.*, § 3.
[3] *Ibid.*, § 4.
[4] *Revised Statutes, 1837*, chapter III., p. 238.
[5] *Comp. Laws*, §§ 4666-4691.

began. In the superintendent's first report (1836) there were 55 districts, and 2,337 "scholars." The number now rapidly increased. In 1850 these numbers were, respectively, 2,536 and 125,218; now they are 7,229 and 514,193.[1] In 1843 a law was passed providing for a tax of one mill on the dollar, half to go to the town library, and half to the schools, but for years nearly half the supervisors failed to levy it. The sale of lands soon gave a fund, the interest on which was annually distributed, but only to those districts that maintained schools the statutory length of time. During all the early period none of the schools were of a high character. The discipline was harsh, the salaries were low, and boys and girls were the teachers.[2]

275. Superintendent Pierce also proceeded to organize the University. There were to be three departments, literature, science and the arts, medicine, and law, and these are still its fundamental departments. Its management was placed in a board of regents appointed by the governor. The constitution of 1850 made them elective and gave them complete control of the institution, thus freeing it from legislative interference. In 1837 its buildings were begun at Ann Arbor whither the legislature had moved it. The result of Mr. Pierce's plans is that this is the greatest of state universities, as it was the first great one, and is one of the great educational institutions of the country.

To fill the gap between the primary or common schools and the University, branches of the University were to be established in various places in the state,

[1] Report of Superintendent of Public Instruction for 1903, p. 163.

[2] Average salaries were, for male teachers, $14 to $15 per month, for female $1.27 per week. All had to board around. Ages were, male 17 to 20 years, female 14 to 18.

with local trustees but partly supported by University funds.[1] These academies were to be preparatory schools, and were also to teach agriculture and prepare teachers. The superintendent wished at least one in every county. They were destined not to live, but the idea which gave them birth now survives in our public high schools, a direct development from the common schools themselves, and a more integral part of the public school system than the academies ever could have become.

276. Here then as planned by our great superintendent is a complete educational system, covering primary, secondary, and higher education. By being able to understand the conditions that were presented to him and to seize the opportunity which they afforded, Mr. Pierce in our public school system has left a lasting monument to his own wisdom, and in the full realization of his ideals has rendered a lasting service not only to the state but to the whole country.

277. Only a few words more can be said with regard to the University. The department of literature, science and the arts was opened to students in September, 1842, with three professors, on the munificent salary of $500.[2] The medical department was opened in 1850, and law in 1859. During the first ten years the institution had no president, as the board of visitors thought such an office inconsistent with our democratic simplicity. But in 1852 Henry P. Tappan was appointed to that position, and the University at once entered upon a period of remarkable growth and development.

[1] Academies were opened in 1839 in Detroit, Pontiac, Monroe, Kalamazoo, and Niles, with 161 students. All were for boys, but girls were afterwards admitted.

[2] By 1851 the salary had increased to $999.99.

Between 1840 and 1845 there was a violent reaction in the spirit shown towards the University. Our chief executive, Governor Barry, placed little value on the institution. He thought the branches much more useful because they reached more people. The people themselves had little appreciation of its importance. Those of one county, on the ground that "the University is of little or no benefit to the state or to the people generally," petitioned that it be done away with and its funds transferred to the common school fund. The legislature was also hostile. It reduced the price of lands, even after they were sold and partly paid for, remitted interest due from holders of part paid lands until the University was without income, and, in violation of the constitution, sold lands to pay the debt incurred by the regents in the erection of their buildings.[1] The net present result of these transactions is that the endowment is only a little more than half of Mr. Pierce's original estimate.

This period passed, a different policy has been slowly developed. In 1869 President Haven succeeded in getting from the legislature an annuity of $15,000 towards University support. In 1873 this was changed to a one-twentieth of a mill tax. The tax is now one-fourth of a mill, and amounts to over half a million dollars annually. In addition the legislature has frequently made appropriations for special purposes, some of them quite large. Beginning with 1870 graduates from approved high schools were admitted to the University classes without the usual entrance examina-

[1] The debt thus paid was $100,000. This amount was restored to the endowment fund of the University in 1877. The real loss to the fund thus came from lowering the price of lands.

tions. Thus in every way the University is now a fully established part of the public school system.

278. While the country schools early ceased to develop, in the city the case was different. At first Detroit, the only city, was divided into eight districts, and its schools were examples of district schools. Yet as early as 1833, the city was given a school committee of eighteen members; six commissioners, who were to divide the city into districts, six directors, who were to have charge of schools and hire teachers, and six inspectors who were to examine and license teachers,[1] all together to inspect the schools and make necessary rules. Thus the school committee really stood for the whole city, as did each subdivision of it.

In 1842 Detroit was made one school district, and incorporated. The school committee was replaced by a school board of two members from each of the six wards, together with the mayor and recorder. In large cities this is still the form of school boards; we have already seen a better form in cities of the fourth class, but in reality there has been little progress in Michigan in this phase of school organization since 1842.

By the act of incorporation the district of Detroit was given the power to raise $200 annually for a library, and not to exceed $1 for each child for the support of the schools. The schools were at once made free. Thus the first city school system became the first free schools of the state. The power to raise $1,500 annually to build school houses was given in 1847, and in 1850 there were 18 schools, one a separate school for colored children. Children were graded according

[1] *All these officers were found in the towns with similar duties.*

to their ages, and schools were open all the year, except four weeks in summer and the usual holiday and spring vacations.

279. From this city system a new form quickly developed. When the capital was moved to Lansing (1847) a "Union School" was opened in the old Capitol. It contained an infant, a primary, a middle, and a higher department.[1] It was thus both a common school and an academy. At first classics were not taught. Boys and girls attended together.[2]

The union school idea spread quickly. Flint seems to have anticipated Detroit; Jonesville,[3] Battle Creek, Grand Rapids, Ypsilanti, Adrian and Port Huron, established them soon after. When the city is large

[1] This higher department had an ambitious course. For the whole union school the course was as follows:

Infant school:
Alphabet and spelling taught.

Primary department:
Multiplication table and geography added.

Middle department:
Circle of studies enlarged.
Use of text-books begun and especially Warren Colburn's Mental Arithmetic. Pupils must master it all from cover to cover.

Higher department:
Most finished style of reading, writing, grammar, geography, history, ancient and modern, higher arithmetic, algebra, geometry, natural and mental philosophy, astronomy, composition, elocution, bookkeeping, surveying and music.

[2] The terms were as follows:
First began second Monday after the third Saturday in April: closed fourth Saturday in July.
Second began fifth Monday after fourth Saturday in July: closed Saturday preceding Christmas.
Third began first Monday after January 1. Closed third Saturday in April.

[3] The first student to enter the University from a union school came from Jonesville in 1851.

enough the "higher department" is now made a separate high school, and in these schools practically all secondary education in Michigan is now given.

280. Detroit's free school idea was equally contagious. The constitution of 1850 provided that "The Legislature shall within five years from the adoption of this constitution, provide for and establish a system of primary schools whereby a school shall be kept, without charge for tuition, at least three months in each year, in every school district in the state." This provision the legislature carried out; rate bills came to an end, and the doctrine was established for the state that "the property of the citizens should educate its children."

281. The years around 1850 were especially fruitful in the development of our educational institutions, and other features of our school system have now to be mentioned. As early as 1847 Mr. A. S. Welsh[1] seems to have been appointed supervising principal of the union school at Jonesville. Grand Rapids was then divided into three school districts, and the largest of these, the eastern, had in 1849 an officer known as superintendent of schools. In 1853 Professor Joseph Estabrook became principal of the "Seminary" at Ypsilanti with supervision of the other schools, and in 1855 Mr. J. F. Nichols was appointed supervising principal of a number of Detroit schools.[2] In 1856 Mr. Frank Little was appointed superintendent of the schools of Kalamazoo, and was succeeded the next year by Professor Daniel Putnam. Other cities soon

[1] Afterwards first principal of the State Normal School at Ypsilanti.

[2] But not of all. Mr. Nichols resigned the next year. No further steps were taken in this direction until 1863, when Mr. J. M. B. Sill was made Detroit's first real superintendent.

had superintendents, and this meant a class of professional men in charge of city schools. Under their guidance our graded school system has developed. There are now everywhere twelve grades, or years in the school course, divided into three departments, primary, grammar and high school, of four grades each, and these schools, as we have seen, are closely articulated with the University. In this development of the city school system the country schools have not shared. They are substantially where they were fifty years ago, and for the country boy there is no such "royal road to learning."

282. We have already mentioned the poor quality of the teaching in our public schools. Our first superintendent proposed to put a minimum limit to wages, with the hope that better pay would secure better service. At about the time Michigan was admitted the first normal schools in the country were being established in some of the eastern states, and Mr. Pierce suggested one for this state. The idea was not acted upon until 1849, when a bill was passed for such an institution, appropriating 2,500 sections of swamp lands for its support. The school was located at Ypsilanti and opened in 1852. This is now a large and strong institution; the state has always generously supported it, and its history has been one of almost continuous prosperity and progress.

For a long time this was our only normal. But in 1895 the Central Normal was established at Mt. Pleasant; in 1899 the Northern Normal at Marquette, and now, 1903, there is an appropriation for a fourth one in the southwestern part of the state, which has been located at Kalamazoo. Some cities, like Saginaw, Detroit, Manistee, and Muskegon, maintain schools to

prepare their own teachers. There are in the state a corps of 16,664 teachers,[1] which changes about once in five years, so that the system is still inadequate.[2]

All state normals are under control of the state board of education, made up of three members elected for a term of six years,[3] and the state superintendent.

283. As supplemental to the normal schools, teachers' institutes were authorized in 1855. One is usually held in each county each year. They are mainly supported by the institute fees, which each teacher in the state must pay, and are under the control of the superintendent of public instruction, who determines the place, time and length of the institute, and appoints the instructors.

284. Our present constitution gives express authority to establish an agricultural school, suggesting but not requiring that it be made a part of the University. Accordingly in 1855 the legislature provided for the selection of a farm as a site for such a school, and appropriated twenty-two sections of salt spring lands for its support, but required that it be within ten miles of Lansing. A farm of six hundred and seventy-six acres was purchased, and two years later the Agricultural College was opened, the first institution of its kind in America. In 1862 Congress gave the state 240,000 acres of land for an endowment for the school, and the fund realized now yields $65,000 per annum. Congress also gives $25,000 a year for agricultural instruction, and $15,000 annually for experimental work. The state has given the institution a magnificent equip-

[1] Superintendent's Report for 1903, p. 165.

[2] The legislature of 1903 made provision for the establishment of county normal schools. Several counties have already taken the necessary steps for the organization of such schools.

[3] One elected every second year.

ment. Its standard of admission is the lowest of any of the great state schools, a fact that puts serious limitations on the character of its work. The college is under the control of the state board of agriculture, a board of six members appointed by the governor for a term of six years.

285. The great mining interests of the state made it certain that sooner or later the state would furnish instruction in mining engineering. In 1875 the legislature requested the board of regents to establish a department of mines and architecture at the University, and made an appropriation for its support for the next two years. The department was established, but had to be abandoned at the end of two years for the want of further appropriations. Ten years later (1885) a separate school of mines was established at Houghton, in the midst of the great copper mines, and it is now one of the great mining schools of the country. It has its own board of control of the usual form.

286. This completes the educational system of the state. No more complete system can be found anywhere, and in many of its features Michigan, young as she is, has been a pioneer. Our rural school system, which we ought long since to have outgrown, needs a thorough reorganization. Otherwise our great need now everywhere is for more thoroughness in our work and greater effectiveness in the teaching. If the inner life of the schools can be made as thorough and as satisfactory as their outward form is complete and comprehensive, Michigan can rank educationally beside any country in the world. Great teachers are wanted in every grade and department, and the policy of the state should be so shaped as to attract and hold in educational work the kind of men and women that are now needed.

CHAPTER XVII

PENAL AND CHARITABLE INSTITUTIONS

287. REFERENCES

Howard, *Local Constitutional History of the United States,* pp. 191-202.—Miller's *Compiled Laws,* and *Session Laws* for each session of the legislature since compilation.—*Territorial Laws of Michigan.*—Publications of Michigan Political Science Association, Vol. III, No. 3.—F. H. Wines, *Punishment and Reformation.*

I. Penal

288. It would at first seem that two sets of institutions apparently so different as penal and charitable ought not to be included under one head. Punishment of criminals and sympathetic provision for the unfortunate would seem to be very different functions, springing from different impulses in the body politic; and once indeed this was true. Punishment originated in the spirit of revenge, and until very modern times was needlessly harsh and cruel, all very different from that kindly benevolence that would seek to soften the lot of those whom misfortune has overtaken, or whose natural endowment is imperfect, or insufficient.

But the modern idea of punishment is quite different. Now neither the individual, his clan, nor his near relatives avenge his real or fancied injuries. We have learned, though perhaps imperfectly, that vengeance is not for us. Whatever is now done is by the state, and the state does not seek to retaliate. Its method is slow, its procedure deliberate and formal. If it

finds it necessary to proceed to severe measures, it is not that the guilty person may receive his just deserts, but partly that he may no longer be able to work the mischief to which he is prone, and partly that his case may serve as a warning to others who may be likewise inclined. We have already observed that the state exists for the purpose of preserving and furthering the public interests. The criminal is such only because he knowingly and intentionally acts against these interests. Hence in dealing with him the state must act for its own preservation, for the integrity of its own purpose, and this is the sole spirit of modern punishment, in which retaliation and revenge have no part.

But even upon this conception a new spirit is now supervening. We are learning to recognize that crime instead of springing from the innate perversity of the criminal, is due to a lack of self-control, or to wrong standards of thought and action, usually the result of improper conditions of life. It is thus a sort of disease, and one of the most serious of misfortunes. The criminal then deserves, not so much our abhorence, as our pity. His misfortune demands the same kindly treatment as any other. Instead of seeking to increase it, we should seek to apply a remedy. For our own safety we may not be able to do away with the idea of punishment, but our main purpose should be to restore him to proper standards of life. From this we see that the spirit with which we deal with those whom we shut up in our jails and prisons need not be less humane or less kindly than that which supplies home and comforts to the lame, the halt, and the blind. Thus regarded penal institutions will be one of the great class we call charitable.

289. Such penal institutions as we have now are

almost entirely modern. Within the last few generations methods of punishment have undergone almost complete change. It is not so very long ago that stocks and whipping-posts were used for the punishment of all milder offenses. More serious ones were punished by maiming or killing. But at present the death penalty is seldom imposed,[1] maiming is never resorted to, and stocks and whipping-posts have entirely disappeared. Instead we use fines and imprisonments, and as imprisonment enters largely into our punitive scheme, prisons must be provided, either by the state, or by its various subdivisions.

290. The institutions provided in this state are of two general classes, those for minor offenses, and those for the more serious. The former are mainly local. Each county must provide a jail, and cities and villages also have them. Confinement in the county jail for various short periods (usually less than a year) is the punishment for a great variety of offenses. But jails are used only for the shortest sentences. Their main use is to detain prisoners who are awaiting examination or trial.

291. The more important penal institutions are maintained[2] by the state. The first in point of time is the state's prison at Jackson. When Michigan became a state it had no prison. This one was built in 1839. In 1877 the House of Correction was established at Ionia, and in 1885 a branch prison at Marquette.[3] The city of Detroit is also empowered by its charter to maintain a House of Correction, to which the courts must send their female prisoners, and may and do send

[1] But for a single offense in Michigan, treason against the state.

[2] *Comp. Laws*, §§ 2173, 2176 f, 2194.

[3] *Ibid.*, §§ 2163-2165, 2170, 2171, 2178.

a great many others.[2] The total number of prisoners in all these institutions is between 1,700 and 1,800.[1] None of these is in the strict sense a reformatory. Political conditions have been such that Michigan has made almost no progress in the science of prison management. The main difference is that those guilty of the more serious offenses are sent to Jackson, or Marquette; the others to Ionia, or Detroit.

292. Closely allied to the prisons, but with more of the charitable in their character and management, are our two reform schools, the Industrial School for boys at Lansing, and the Industrial Home for Girls at Adrian. The former was established in 1855, the latter in 1879. To them boys between the ages of ten and sixteen, and girls[2] from seven to seventeen, who would otherwise be subject to punishment by fine or imprisonment, may be sentenced by the courts before which they are convicted, to remain until they are seventeen. About a thousand boys and girls[3] are undergoing sentences of this kind. They are taught many useful occupations, and the whole character of the influences thrown about them is such as tends to lead them back to proper modes of thought and action. In a great majority of cases the work of reformation is successfully accomplished.[4]

[1] The figures furnished me by the secretary of state are as follows:

At Jackson	728
At Ionia	394
At Marquette	237
At Detroit	363
Total	1,722

[2] In Wayne county, girls may, on request of parents, be sentenced to the House of the Good Shepherd in Detroit.

[3] Nearly twice as many boys as girls. Boys 667, girls 350.

[4] Above 75 per cent.

II. Charitable

293. From the very first of our existence as a territory some provision was made for the care of the poor. The first poor-law was passed by the governor and judges in October, 1805. Application was to be made to three justices of the peace, and upon their approval the marshal of the territory was "to contract with the person offering the lowest terms for the support of such pauper."[1] When the territory was divided into judicial districts, the district judges were to appoint three "discreet persons" to be overseers of the poor, who were to have their full care and management.[2] This arrangement required some way of determining to which district the poor belonged, and so legal "settlement" was defined as residence one full year within the district.[2] Those not having acquired "settlement" were sent back to the district whence they came. With the organization of counties the county commissioners were to "have the care and management of all paupers in their respective counties."[3] After 1827 each township was to care for its own poor, and two overseers of the poor were among the town officers.[4] Thus the smallest division of the territory was made the poor district, and the keep of the poor was always let to the lowest bidder.

But in time the feeling towards the unfortunate became more kindly, and there resulted a change of method. In 1828 Wayne County was authorized by law to build a poor-house (called House of Reformation),[5] and in 1830 a general law was passed authoriz-

[1] I *Ter. Laws,* pp. 90-91.
[2] II *Ibid.,* p. 40.
[3] II *Ibid.,* p. 115, I *Ter. Laws,* p. 531.
[4] II *Ibid.,* pp. 323, 595, etc.
[5] II *Ibid.,* p. 677.

ing every county to establish a poor-house on substantially the same plan.[1] Then it soon came about that the poor were no longer auctioned off to the lowest bidder.

Since 1830, only minor changes have been made in the general system. There are now three "superintendents of the poor" for each county, elected by the board of supervisors.[2] They are incorporated, have general charge of poor affairs and of the poor-house, and appoint the person to be in immediate charge. Each county now has its poor-house in which all permanent aid is given.[3] But temporary aid may be furnished by the supervisor, or in cities, where the care of the poor is a more serious matter, by some special officer or commission. In some cases the whole county is the poor district, and then the law for legal settlement determines to which county the poor belong. In others each town may pay for the support of its own poor in the county poor-house, and then the law applies to towns.

294. For some classes of poor special provision is made. It is not now lawful for counties to keep children.[4] The state makes provision for them in the State Public School at Coldwater, to which the county superintendents must send all dependent children of sound mind and body between the ages of two and twelve.[5] The work of this institution in general is to care for the children thus received, and find for them perma-

[1] III *Ter. Laws*, p. 823.

[2] *Comp. Laws*, §§ 4502-4579.

[3] Care of the poor includes all necessary medical attendance, and such cases as require special treatment may be sent to the University Hospital.

[4] *Comp. Laws*, § 5556.

[5] *Ibid.*, §§ 2021-2035.

nent homes in private families. Parents lose all claim to their children when they are taken to Coldwater, and this claim the state will transfer to suitable persons who are willing to adopt them. Even when located in private families, the state does not lose sight of its wards. An agent of the school is constantly in the field. The foster home of the child is frequently visited, and if conditions are not satisfactory the child is removed. The school was opened in 1874 and has since cared for 5,168 children.

Another class of dependent poor is provided for in the Soldiers' Home at Grand Rapids, an institution intended as a refuge for the men who have served as soldiers in our late wars, and for the women and children naturally dependent upon them. The institution was established in 1885. Provision for soldiers' wives and children was made in 1893. There are 964 inmates, 81 of whom are women.

295. Besides its poor, the state makes provision for certain other classes of unfortunates. The first one thought of, and the largest, is the insane. The law establishing the Michigan Asylum for the Insane was first passed in 1848. But the asylum, which was located at Kalamazoo, was not opened until 1859. For about twenty years this was the only asylum. But in 1877 the Eastern Asylum was established at Pontiac; four years later the Northern Asylum was located at Traverse City, and in 1893 a fourth asylum was built at Newberry, in the upper Peninsula. These four asylums now report a total of 4,332 patients[1], while

	Men	Women
[1] Kalamazoo	723	714
Pontiac	590	580
Traverse City	708	585
Newberry	240	192

Wayne County maintains an asylum for its insane in connection with its poor-house, and there are a number of private asylums.

A fifth institution of slightly different character is the Asylum for Dangerous and Criminal Insane at Ionia, established in 1885, which has 302 patients.[1]

In 1893 the legislature established the State Home for Feeble-minded and Epileptics. It is located at Lapeer and has 458 inmates.[2]

Two other institutions provide for the education of certain children that could not well be dealt with in the public schools, the School for the Deaf and Dumb at Flint, and the School for the Blind at Lansing. The former, established in 1854, has now 428 students and has educated in all 1,336. The latter was established in 1879[3] and has 120 students.

In addition to these the legislature for 1903 has appropriated $110,000 to establish an institution to give employment to the blind. This has been located at Saginaw, and is now in operation.

296. Each of the institutions above enumerated is in general charge of its own board of control of three or of six members, and in immediate charge of a superintendent appointed by the board. The members of these boards are appointed by the governor, with the approval of the Senate, for a term of six years, one or two, as the case may be, going out of office every second year.

297. The state also makes one or two other important provisions for the proper care of its various

[1] Men 264
Women 38

[2] Male 231, female 227.

[3] It had been previously connected with the school for the Deaf and Dumb.

classes of wards. In 1871 a law was passed providing "That the Governor, with the advice and consent of the Senate, shall appoint four suitable persons, residents of the state, to be called and known as the 'board of State Commissioners for the general supervision of charitable, penal, pauper, and reformatory institutions,'"[1] "for a term of eight years." In 1879 the name was changed to the "Board of Corrections and Charities,"[2] but its original title indicates pretty clearly its duties. All penal and charitable institutions, state, local or private, are to be visited at least once a year.[3] Any abuses or mismanagement found are reported to the governor with recommendation of such remedies as seem proper. The board of corrections and charities has never been political. Its members have always been distinguished for their ability; to the conscientious discharge of their duties is largely due the fact that no serious scandals have ever been connected with our penal or eleemosynary institutions, and to their initiative is mainly due such progress as has been made in their management, and in the treatment of their ununfortunate inmates.

This law was supplemented by another passed in 1873, authorizing the governor to "appoint in each county of this state an agent of the State board of Corrections and Charities for the care of juvenile offenders and dependent children."[4] Whenever compiaint is made against a child the county agent must be notified; it is his duty to make a full investigation, and the case will be largely determined by his judgment. "No

[1] *Comp. Laws*, § 2250. One goes out of office every second year.

[2] *Ibid.*, § 2249.

[3] *Ibid.*, §§ 2255, 2256, 2258, 2252, 2259.

[4] *Ibid.*, §§ 2260, 2261.

child shall be indentured, adopted, or otherwise placed in charge of any person by any state institution . . . . unless the applicant for any child shall be first approved in writing by said agent for the county."[1]

298. We are now able to see that the state makes magnificent provision for all classes of its unfortunate citizens. Scarcely a country in the world can make such a showing. Money for all these is generously appropriated. The legislature of 1903 has voted nearly three and a half million dollars for their support,[2] about two-thirds of which is for current expenses. In addition cities and counties expend many thousands for the support of the ordinary poor.

[1] *Comp. Laws.*, § 2263.
[2] $3,440,616.37.

CHAPTER XVIII

CITIZENSHIP

299. REFERENCES

Howard, *Local Constitutional History of the United States,* chapter I.—Fustel de Coulange, *The Ancient City.*—Willoughby, *The American Constitutional System,* chapter XV.—Morey, *Outlines of Greek History,* chapter VIII.

300. We have had frequent occasion to see that government arises from the fact that men live in communities. Two other facts ought by this time to be clear. The community has complete authority over its individual members, that is, each member is a subject; and community action, all that is involved in controlling and directing, is primarily undertaken for the common good, that is, for the benefit of the members. These members, who on the one hand are subjects, and for whom on the other all governmental action is undertaken, are called citizens, and in this their double relation, we get the first general meaning of citizenship.

301. But who is the community member? Is a citizen simply a resident or an inhabitant? Evidently not. There have always been certain conditions of membership and these we need now to understand.

On its face the word citizen seems to mean "member of a city," but its real significance goes back of the origin of cities and is best seen in a more primitive community. The original organization of society was not political but gentile. Men were united in clans,

and clans were bands of near relatives, descendants of a common ancestor. Tribes were made up of clans, so that clan membership, to which a man must be born, lay at the base of tribe membership. That is, the condition of such membership was what we may call the "accident of birth."

When the nomadic tribes settled into cities, or city states, the ties of blood gave way to those of locality. Men came to feel that their common life and their common interests depended, not upon their descent from the same remote father, but upon the fact that they lived together, and were mutually dependent and helpful. Citizenship still depended on life-long association, but the "accident of birth" was now birth in a certain place, instead of from certain parents.

Cities, the first fixed, stable communities, and at first independent, have now been replaced by states, larger communities, occupying much larger extent of territory, as, for example, the whole United States, and the primary idea of citizenship is being born into this great community. The "accident of birth" is with us being born within our territorial limits.

But birth, though the fundamental requirement, has not always been absolutely essential. Even the clan would sometimes admit those not of the common stock. Cities always found ways of admitting strangers, and all states now do. This process, always essentially the same in character, is called naturalization. The person admitted to a clan had to renounce the clan of his birth and declare his allegiance to his adopted one, always with appropriate and solemn ceremonies.

302. With us the process of naturalization is regulated by laws of the United States.[1] The "alien" who

[1] *Const. U. S.* I, viii, clause 4.

wishes to become naturalized must have been a resident of the United States continuously for five years next preceding his application.[1] At least two years before admission, he must declare on oath before a court of record, state or national, or the clerk thereof, his intention to become a citizen. On his final application he must declare on oath "that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty and particularly, by name, to the prince, potentate, state, or sovereignty of which he was before a citizen or subject."[2] If he had a title of nobility he must also renounce that,[2] and he must swear that he is not an anarchist.

303. As citizenship then is this peculiar membership of a community, what are its advantages? In primitive life men were forced to unite by adverse conditions, in the struggle against all the world for existence. Two classes of advantages came to them: first security, protection, both internal and external, against their own clan members, and against "strangers," and savage beasts; and second the means of a livelihood which could better be obtained by a small community than by men working singly. Thus the earliest clan life was communistic. The work done, the provision made against cold and hunger, was not by the individual for himself, but by all for the whole clan. Each wrought for the community, and on the community each in turn depended for his sustenance. Existence itself was wrapped up in clan membership, and in such immediate and direct ways

[1] I *Comp. Laws U. S.* Ed. 1901, Sec. 2170.
[2] Same, Section 2165, and Amendment of 1876.

as to be easily understood. But in this clan-life it was the common interests that were mainly emphasized. The individual was sunk in the community. Mere personal interests were scarcely considered.

304. The first class of these advantages it is the business still of the community to secure. Protection, internal and external, it owes to each of its members. Security at home, in person and property, it is the function of our state to guarantee. Protection abroad is given by the United States, since the central government alone deals with foreign relations, and since state and national citizenship are the same.

305. As to the second class of advantages modern conditions would at first seem to be just the reverse of the ancient. Life with us is emphatically individualistic. The individual's interests are no longer bound up in the common life of a small group of his fellows; his sustenance is no longer a mere incident in their common product; he now has distinct rights and interests of all kinds, which are recognized and maintained. He no longer exists merely for the sake of the community, according to our modern theory, but the community exists for him. What we now need to see is that our modern theory is only half right. The communistic element is not gone from our modern life but has changed its form, and is now entirely consistent with, and even necessary to, that individualism which is our boast.

In the first place let us note that the individual's life is much fuller and richer now than ever before. The difference between us and our savage ancestors is a difference that has come about by a long process of race development. It is, so to speak, wholly a communistic product, solely the result of community life.

The individual but reproduces the characteristics developed in community life, and must stand in vital, organic relation to it, or his own development is impossible. Thus this communism is the source even of that which is individual.

In the second place, even in material things, the individual is still dependent upon the community, though in a way not so easily understood. He must live now through his own exertion, but evidently his method of obtaining a livelihood is completely dependent upon the existing order of things, and that order the community maintains. Moreover in one sense he works less directly for himself now than ever before. In the early stages each one's labor went directly to the support of the small band with which he was identified; that little community was self-supporting; what each produced was complete in kind, and the total product was simple and meagre, often indeed inadequate. Now no small community is self-supporting; only a very large one is so, and no one does all the things necessary to its support; each contributes only one, and perhaps not that, of the many elements that go to make the total. The total product is elaborate and complex, and as compared with former times, very abundant. The individual thus draws his subsistence, not directly from his own labors, but almost entirely from that of others, and if what they do were taken away he would perish. Out of this largeness and complexity of community life come greater variety to individual lives, greater culture, and enormously greater material comforts. The individual can get more for himself than ever before, make more of himself, attain to greater fulness of life in every way. But it is the communistic element that makes for him his opportunity; it is really

all embracing; he is more dependent upon it than ever before; beyond the possibilities which it affords he cannot possibly go.

306. This double relation, this dependence both spiritual and material, of the individual upon the community, makes evident the real meaning of community membership. To enter fully into this complex life, to share fully its blessings, to gather to one's self its full spirit, life membership is essential. The "accident of birth" must always remain the foundation of full citizenship.

307. This discussion should also make plain our public obligation. In the time of the clan, its life and welfare was man's first great care. To perpetuate it, to preserve it from injury or destruction, even by the sacrifice of himself if necessary, was the one great motive that ought to underlie all his action. Patriotism was thus the first great civic virtue, and its development the first great step forward in the moral progress of the race. If our dependence upon community life is greater to-day than ever before, our obligation cannot be less. Patriotism is still the fundamental civic virtue. It was first conceived of as valor, the courage to go forth and battle for the community; it means much more now, as the progress of the race has shown that many other things are necessary for its welfare. The community for us is the state. Its organization and character have made it possible for each of us to become what he is, to acquire what he has. Its welfare should always be our first thought, paramount always to mere personal interests.

CHAPTER XIX

THE FRANCHISE

308. References

Schouler, *Constitutional Studies,* Part III, Chapter IV.—*The History of the Suffrage in Michigan,* by Mary Joyce Adams. Publications of the Michigan Political Science Association, Vol. III, No. 1.—Ashley, *The American Federal State,* Chapter XXII.

309. We have already seen that in a democracy each member of the community is entitled to all the rights which the community secures to its members. These rights have already been enumerated, but the question naturally arises, is the franchise one of them? Does citizenship carry with it the right to vote? If we turn back to the various classes of rights already enumerated, we do not find voting definitely mentioned, but under IV in that list of rights what is meant by "advantages"? Would not the suffrage be an "advantage" which the citizen could claim as a right?

The answer to this question is purely a matter of history. All our rights are based upon what is customary, and if voting has been with us a recognized accompaniment of citizenship, then each citizen can claim the right to vote. Otherwise he cannot.

310. The first fact that confronts is that not all citizens of a community could be allowed to take part in elections. Those below a certain age must be excluded, and that age has advanced from fifteen years among our remote ancestors to twenty-one with us.

Then in the past women have been excluded, and with slight exceptions still are. These two classes, women and children, make up nearly four-fifths of the population.

Are the remaining one-fifth, "adult males," all voters? In no country has this ever been true. In early Massachusetts, to go no farther back, not more than one-fourth of these were allowed to take part in government, and although the proportion was enlarged in later colonial history, there were always restrictions, and a considerable portion of the people did not have the right of suffrage. The first restrictions in Massachusetts were religious. Later in all the colonies they took the form of property qualifications, and these continued in all the states until after the adoption of the Constitution. Then the Democratic revival, first led by Jefferson, swept them all away, so that now wealth does not count as a requirement for the suffrage. Before this movement was completed elections had begun in Michigan and we can trace its progress here.

311. Our first election in 1819 was under a law of Congress, as it was for congressional delegate. The voters were defined in that law as every *free, white, male* citizen above the age of twenty-one years, "who shall have paid a territorial or county tax."[1] Here then unfree, colored, and female citizens are excluded.

In the main requirements of the Constitution of 1835 there was little change. "Every *white* male citizen above the age of twenty-one years, having resided in the state six months next preceding any election, shall be entitled to vote."[2] But another clause extended the

[1] This was meant as a property qualification, but the courts held that a poll tax satisfied the requirement.

[2] *Const.* 1835, Art. II, I.

franchise to some who were not citizens, to "every white, male inhabitant who may be a resident of this state at the time of signing this constitution."[1]

In the constitution of 1850,[2] the qualifications were "every white, male citizen," and every white male who was an inhabitant June 24, 1835, and also every white male who was an inhabitant January 1, 1850, and "has declared his intention to become a citizen of the United States" or "who has resided in this state two years and six months and declared his intention as aforesaid, and every civilized male Indian," "shall be an elector," providing he was of full age, and had resided in the state three months, and in the township or ward ten days. For an alien to "declare his intention" was not to become a citizen and with the great influx of foreign population, there came to be thousands of voters who were not citizens, and who, to continue to enjoy the privilege, did not need to become such. Manifest evils resulted from this, so that in 1894 an amendment was adopted which practically confines the suffrage to citizens.

On account of the word *white* in the Constitution of 1850 (as always before), the negro, though a native born citizen, could not vote. This discrimination did not disappear until 1870, when an amendment was adopted by which the word was omitted

312. This brings us down to the present time and our fundamental law now reads: "In all elections every male inhabitant of this state, being a citizen of the United States, ... shall be an elector and entitled to vote; but no one shall be an elector, or entitled to vote at any election unless he shall be above the age

[1] *Constitution*, 1835, II, I.
[2] *Ibid.*, 1850, Art. VII, I.

of twenty-one years, and has resided in this state six months, and in the township or ward in which he offers to vote twenty days next preceding such election."

The limitation as to residence is to prevent what is known as "colonizing" in politics. Age we have seen is a necessary limitation, and sex a historical one. Beyond these citizenship is our only qualification, and the franchise goes with citizenship. We have come here, as in most of the northern states, to what is known as "manhood suffrage." Nevertheless, our examination has shown that citizenship has not always carried with it the right of suffrage, and does not now. Voting is a privilege which the state may or may not grant, and if at any time its welfare should demand that a portion of our citizens should be disfranchised, such action would in no way be a violation of our customary rights.

CHAPTER XX

THE CONDUCT OF ELECTIONS

313. REFERENCES

Macy, *Our Government,* Chapters XLIII, XLIV, XLV.—Macy, *Party Organization and Machinery.*—Ashley, *The American Federal State,* Chapters XXII, XXIII.—Cooley, *Constitutional Limitations,* Chapter XVII.—*A Brief History of the Ballot in Connecticut* by Professor Simeon Baldwin can be found in Vol. IV of the *Papers of the American Historical Association.* New York, 1890.

314. We have already seen that many officers in Michigan are chosen by the people. As with every other feature of our political institutions, we do not invent our methods of choosing, we inherit them, although they are constantly undergoing modification at our hands. Nevertheless our election methods are not very ancient. Our ancestors did not bring them with them from across the seas. Nearly all have been wrought out as the results of experiments on American soil, and for their beginning we need look no farther back than to the beginnings of New England.

315. Election methods in the north began on board the Mayflower when John Carver was made governor of Plymouth. But this beginning was of the simplest kind. Forty-one men, in the cabin of the ship, indicated their choice by uplifted hands, or by *viva voce* vote. Although they elected their governor and assistants anually for seventy years, Plymouth people contributed little to the development of election methods,

because the freemen all assembled in one place for this purpose.

316. In Massachusetts, also, the governor and assistants were at first elected in general meeting, either by show of hands, or *viva voce.* Here, however, new methods came quickly. John Winthrop had been regularly elected governor until 1634. Then voting was by papers, as the governor himself records, and Winthrop was defeated. This voting by "papers" and Winthrop's defeat illustrate the first great principle of a free election. By show of hands men must vote under the eyes of others, and especially of the very persons who were candidates, and perhaps already in office, a fact that would constitute more or less of a restraint. But papers could be prepared in secret, and voting would thus be entirely untrammeled. This was thus the beginning of the secret ballot.

From this first use of papers it is easy to see how the whole system of elections has developed. At first the papers were dropped in a hat. But the hat soon gave way to the ballot box. The slips of paper changed into prepared ballots, and the advantage of secrecy, which the very first use of papers showed, has come to be more and more appreciated and more carefully provided for. But it is not necessary to follow in detail all the changes that have come about.

317. In Massachusetts a new problem quickly arose. The colony grew so rapidly and spread out so far that it was soon difficult or impossible for all the freemen to meet. The first method of overcoming this difficulty was to allow the voters to send their votes to Boston by proxy, under seal. But the obvious limitations of such a method soon caused it to be abandoned. Our present simple and seemingly natural solution was reached

only after a series of experiments. The balloting was made local, as it is now, but at first the ballot boxes were sent to Boston, where they were opened and the votes counted. To make both the voting and counting local, and to send to the capital only the result, was another step in advance.

318. The method reached for overcoming the difficulty of distance brought with it another and more difficult problem, for which a satisfactory solution has not yet been found. This is the problem of nominations. When the freemen were all assembled in one room, it was easy enough, by methods familiar to every boy and girl, to place men in nomination. They could be directly named, or found by a series of informal ballots. But such methods were impossible when the voters no longer came together. Moreover, in such a case candidates became a necessity, for otherwise the votes would be so scattered that there would be no result. The Massachusetts people tried in various ways to overcome this difficulty. At one time one man out of every ten was sent to Boston, thus forming a nominating convention, something like those we are now familiar with. At another a system of double elections was tried, very much like the primary election plan with which we are now experimenting. Both methods were abandoned for one more consistent with the aristocratic temper of the times.

319. Thus in New England the three great features of a complete elective system were early developed: the secret ballot, illustrated in voting by little papers; the localizing of elections, so that all entitled might freely participate, and a method of nomination, so that by being narrowed to a few candidates the votes need not be hopelessly scattered.

320. All that has so far been said about elections is with regard to them as they were before the middle of the Seventeenth Century. Strange to say, when Wayne County held its first election in 1798, the electors all met at Detroit and elected their three delegates to the Assembly of the Northwest Territory by *viva voce* voting, and continued thus until elections ceased in 1802. The next election, for congressional delegate in 1819, gave us our first election law. The territory was now too far spread out for the electors to meet in one place. Election districts, called precincts, had to be provided, and so the elections were to be "held in the several counties of this territory at the seat of justice of the county," and not to be *viva voce,* but by ballot. The sheriff was to post notice of elections three months in advance. He was also to provide a "box, trunk, or receptacle" for the ballots, "which box, trunk or receptacle shall be locked, sealed or secured." "And a small hole shall be made in the lid, top or cover of the box, trunk, or receptacle, sufficient only to receive such ballot, and through which all the ballots shall be put into such box, trunk or receptacle."[1]

As there was but one office to fill, the ballot might be "a paper, parchment, card, or ticket, containing the name of the person written or printed, or partly written and partly printed thereon." To secure secrecy, it was to "be folded, covered, sealed, or closed in such manner as to conceal the name written or printed thereon," and "with its proper folding, covering, seal, or closing, without suffering the same to be unfolded or uncovered, or the seal thereof to be broken, or the ballot in any manner unclosed, or to be inspected," was "to be put into a sufficient box, trunk or receptacle."

[1] The law is found in II *Ter. Laws,* p. 149 f.

As voting is a public function it must be under official public control. The officials for such purpose are called election inspectors, and the law provided that the county judges, the county commissioners, and the sheriff, all appointed officers, should be the inspectors. They were to have charge of the elections, receive the votes from the electors, and deposit them in the box, and to have charge of the boxes when the voting was finished. They were also to appoint two clerks by whom duplicate poll lists were to be kept. All were to take oath for the faithful discharge of their duties.

The day after the election they were to canvass the votes and make their return to the secretary of the territory. There were now four counties, and four returns would come in and have to be combined. Hence another piece of election machinery was necessary, a territorial canvassing board, and this consisted of the territorial secretary, attorney-general, and treasurer.

321. In 1827 towns were organized, and made election precincts. Town officers had now to be chosen, and thus it was necessary to select a number of officials at the same time.[1] In 1833 a law was adopted requiring that there be as many ballots as there were offices to be filled, each to contain the name of the person voted for and the office for which he was intended.

322. With the coming of statehood elections underwent considerable changes. Under a new law a general election was to be held in the state every alternate year on the first Monday in November and the succeeding day, thus giving a two-day election. The law was

[1] This problem had really arisen in 1825 when a number of county officers were made elective, but no legal solution was found for it at that time.

soon changed, the Monday dropped, and our election is still the "Tuesday succeeding the first Monday." The voting at this election was to "be by ballot in writing on a paper ticket, containing the names of the persons for whom the elector intends to vote, and shall designate the office to which each person so named is intended by him to be chosen."[1] When once the idea of putting a number of names on one ticket was entertained, it soon prevailed over all others, and in a few years there was but one ticket and one ballot box for each precinct.[2]

More complicated canvassing machinery was also necessary. The town inspectors were supervisor, justices of the peace and clerk. They made their report to the county canvassing board, made up of one inspector from each town. State returns were then sent by the county clerk to the state canvassing board, made up of the secretary of state, the auditor-general, and the state treasurer.[3]

323. With this the main outlines of our election and canvassing system were fixed very much as they are now. In contrast with the short one of territorial days, the ticket now had the modern characteristic of being a very long one, containing the names of state and county officers, congressmen, and at times presidential electors. The town meetings were separate from the general elections and were to be, as they still are, on the first Monday in April of each year.

324. During all the first half of the Nineteenth Century, population in Michigan was comparatively sparse.

[1] *Revised Statutes*, 1837, Title II, Chap. III, Sec. 4 f.

[2] *Ibid.*, 1846, Title II, Chap. 5, Secs. 8, 11.

[3] There would of course need to be special ways of canvassing results for various representative districts, but it is not necessary to follow them out here.

Under such conditions every man knows all his neighbors, and knows all about them. Hence there was little difficulty at any election in ascertaining who were and who were not entitled to vote. The personal knowledge of the election officers, and of others interested, together with the poll lists, gave all the check that was necessary. From the first of our own elections a corrupt practises act existed, providing for a challenge of voters if there was cause for suspicion, a swearing in of votes in case the legal requirements had all been fulfilled, and proper punishment in case of illegal voting. If the challenged person swore falsely he would of course be subject to the penalties for perjury. But as population increased the people's knowledge of each other would grow less, and it would not always be possible to tell at sight who had the legal qualifications of electors. So it became necessary to make out beforehand a list of those entitled to vote, and allow none to vote whose names were not on the list. This process is called registration, and the first law for it was in 1859. It provided for a registration board, and the members might themselves put such names on the list as they thought were entitled to be there. The law has necessarily grown much more exacting, and now the elector must himself see that his name is properly registered. Registration lists are carried over from year to year and from election to election, but every few years complete reregistration is required.

325. When Michigan became a state, a new condition developed that produced great changes in political methods, and gave to elections a new character. During all colonial history there were no great political parties, and the same was true during the whole of our territorial period. But with statehood Michigan was

brought within the turmoil of national politics. The people here were quickly divided into the same two hostile camps as in the country at large. At first the two parties were Jackson Democrats and Whigs, but for half a century now they have been Republicans and Democrats.

Parties in America have become very distinct and fixed organizations. They are highly organized, take strong hold upon the people, and develop a strong and reliable party spirit. Each party wishes to be in control of the machinery of government, and the two great parties, there may be numbers of smaller ones, are usually nearly enough equal in numbers to cause the contest between them for supremacy to be keen and strenuous. Moreover, although formed in the first place on national issues, their organization with us has been extended to take in all elections, state or local, and so in politics they are all pervading. From the distinctness of parties among us, from the strength and endurance of partisan feeling, and from the high degree of control which party leaders have over the rank and file of their followers, come results in elections that give methods and character to our present political life.

326. While distinct tendencies usually separate the people into factions, and while great principles usually underlie party divisions, definite objects are generally set forth for the separate contests. But these objects are necessarily party objects, chosen for the advancement of the party, not primarily for the people, nor necessarily in their interests. For such great bands there must be leaders, but these again are party leaders, not leaders of the people, though on rare occasions a great popular leader will come forth from among them. Each party will have its candidates for the vari-

ous offices, but these are party candidates, and when elected are too apt to legislate or administer in the interests of the party rather than of the whole people. From the strength of partisan feeling, people become interested in a party victory merely as a victory, without reference to public ends, or even to the ante-election party promises. Organization will go far towards party success, and that organization is best which is most nearly military in character. That is, there will be one supreme leader who will dictate to his subordinates, who in turn will marshal the forces. The very exigencies of party organization are such that they call forth, not leaders noted and trusted for statesmanship and uprightness of character, but those skilful in partisan manipulation. Unscrupulous methods in party management have been followed to an extent and with a success that is amazing and alarming. These are the new influences that have come to Michigan elections, as they have to the elections of the whole country, and some of the results we now need to see.

327. The results themselves have not come all at once; they have been of slow growth, steadily developing for the last three-quarters of a century. The first effect has been upon the ballot. As each party would have candidates for all offices, each would prepare a ticket containing the names of party candidates. Up to within a few years, when an elector would go to the polls, he would find as many tickets as there were parties in the field. At first the preparation of these tickets was entirely unregulated by law. Abuses almost necessarily grew up. Any slight difference in color, form, or even the texture or printing of the ballots, would serve readily to distinguish them. It would

thus be easy for those interested to know how each man voted. Freedom of elections would be destroyed.

This first result was quickly followed by a second. The easily distinguishable ballots especially lent themselves to corrupt practises. The great influx of foreigners and the wide extension of the franchise, gave a large class of voters who had no appreciation of the value of the ballot. Such voters could be purchased, and were. In Michigan, and even more elsewhere, elections have been frequently, and in places regularly, controlled by such methods. Prices of votes have been paid in money, in public employment, and in public offices.

328. The next great change has been in the method of getting candidates for office. We have just seen that these will be party candidates. Our recent methods of nomination accordingly are such as the parties themselves have developed. In this again they have been entirely unhampered. There were no legal restraints of any kind before 1889, and when laws came, they were, for the most part, simply the statutory enactment of customary party practise.

329. The methods of nomination in Michigan are familiar everywhere in the north. Local officers are nominated in the caucus. The caucus is a meeting for a small district, usually an election precinct, a town, or a ward, and is composed of such members of the party calling it as choose to attend. For larger districts, such as the county or city, the caucus sends delegates to a convention. This convention in turn makes nominations for its district, and also sends delegates to another convention. The state convention will nominate the state officers. Conventions for legislative, congressional, and judicial districts are formed in simi-

lar ways. All conventions thus start from the caucus, but delegates to some of them are two or three degrees removed from the constituencies they are supposed to represent.

Our system of politics is mainly a two-party system. So the candidate for any office must be on one ticket or the other or there is no hope of his election. Hence methods of nomination become quite as important as methods of election. If the people are to select their own rulers they themselves must make the nominations. But caucuses and conventions, from their very nature, are easily manipulated, and are the greatest sources of evil in our political system. Left for more than half a century without any regulation, the practises that sprang up in them, and have now been made law, are the very ones through which they have been controlled for the advantage of certain individuals, or of certain private interests. The character of the officials they give us entails much needless expense upon our state and municipalities, and frustrates through imperfect execution much that our laws are intended to accomplish.

One other great influence has come from the fact that there are many appointive officers, especially in the cities. Of course in Michigan, as elsewhere, these are made the spoils of party politics. This not only gives us a low grade of appointive officials, but it is largely through them that caucuses and conventions are controlled, and nominations determined.

330. Here then are four great evils of partisan politics: the destruction of the freedom of elections, corruption of the electors, evil practises through which nominations are controlled, and a class of subordinate officials, paid at public expense, apt to be more numer-

ous than the public service demands, and with a direct personal interest in keeping their superiors in office. Less evils would long since have overthrown our government, or destroyed its character, had the public spirit of our citizens been less virile, and at bottom less tenacious.

331. A remedy for our condition is not easily found. The last of the evils could be most easily done away with. A thorough going civil service law would soon destroy its worst features, and would affect also the manipulation of conventions, and the corruption of voters. It is surprising that we have not such a law, applying to state and municipal officers.

For the evils directly connected with the elections, the destruction of the secret ballot and the purchase of voters, remedies have already been sought, and with a good degree of success. By a law first passed in 1891 and amended in 1895 separate party ballots, but not party tickets, were entirely done away with. All ballots are prepared under state authority, and are never out of the control of a public official. There is but one ballot, the so-called blanket or Australian ballot, and all the party tickets are printed on it. The voter must mark either the ticket, or the candidates, for which he votes. He does not receive his ballot until inside the polling place, and then retires to a booth, where, in absolute secrecy, he must mark and fold it. Each ballot is numbered to prevent surreptitious exchange, but the number is torn off before it is put in the box. Voting is thus a very intricate process, but complete freedom is secured, and the purchase of votes has been greatly reduced. The weak spot in the law is that illiterate people may receive assistance in marking, which is taken advantage of in the case of purchasable voters.

In the matter of nominations almost no progress has yet been made. But laws have now been passed and put in operation in Detroit and Grand Rapids for a double election, the first giving candidates, the second electing. Results are better but not wholly satisfactory. The two laws are based on a complete recognition of parties and party tickets. Yet any real reform must aim to break up the connection between local and national politics. Local contests should be fought out on local issues. If this were done the first effect would be to break up, not national parties, but party organization, the party machine, and this is the real source of the evil.

332. Two other processes now come under the head of elections in Michigan practise, though strictly not elections. The first of these is with regard to raising money in certain cases in counties and cities. The board of supervisors, for example, is the regular legislative body for the county, and can levy all necessary taxes for regular county expenses. But if an extraordinary occasion arises, such as building a bridge, or a road, or some county building, the question of raising the money, if over $1,000, must be submitted to the people.[1] But the vote of the people, even if affirmative, would not levy the requisite tax.[2] The board must still act, and may, at its discretion, levy the tax or not.[2] A similar course is sometimes taken over city expenditures. The submission of such a question to popular vote is a case of the *Plébiscite.*

333. But while the people have not ordinary legislative power, there is a kind of legislative power that they alone have. The state constitution is our funda-

[1] *Comp. Laws,* §§ 2484, 2493.
[2] *Const.,* Art. IV, Sec. 1.

mental law, and this, under our customs, the people must enact. Moreover, they alone can change or repeal it. We have already seen the process. A convention is called,[1] and the instrument which it produces is submitted to the people for approval or rejection. Four times in our history this process has been gone through with (1835, 1850, 1861, 1873); twice (1835, 1850) the proposed constitution was accepted, that is, was enacted into law. Twice (1861, 1873) it was rejected. Amendments have frequently been submitted.[2] The submission of a constitution or an amendment to popular vote is a clear case of the referendum, and we have already seen that this is a characteristic American proceeding, of wholly indigenous growth.

334. There is a sharp distinction between the plébiscite and the referendum. The act of the people in the former case carries with it no legal authority, in the latter it is, if favorable, the enactment of the proposed measure into law.

[1] Usually by election but the members of the Convention of 1873 were appointed by the governor.

[2] *Const.*, Art. XX, Sec. 1. Amendments are proposed by the state legislature on a two-thirds vote in both houses.

CHAPTER XXI

TAXATION

335. References

Miller's *Compiled Laws*, under the various phases of taxation.—Cooley, *Constitutional Limitations*, Chapter XIV.

336. We have several times had occasion to notice that governments must have money. Without it they can perform none of their functions, and cannot even exist. This is true of all grades of government, from the township or municipality to the state or the United States. A moment's consideration will show us some of the main things that money must be used for.

337. Thus a township has roads to lay out and to keep in order. It must build and repair culverts and bridges. It may build a town hall, and then must take care of that. There are often noxious animals and weeds that it is willing to pay to have destroyed and sometimes there are "out of door," poor that must have public aid. The town officials give time and energy to town service for which they must be paid. The legitimate annual expenses of an ordinary rural township will thus run from $600 to $1,000. Of course an extraordinary occasion, like the bridging of a large stream, or the building of an unusually difficult piece of road, will entail very much larger expenditures.

338. County expenditures will be of a similar nature but on a larger scale. There are often county roads and bridges and ditches. The "indoor" poor are regu-

larly taken care of by the county; hence there will be the county poor-house and poor-farm. The county is the judicial unit and so must have a court house and a jail. Most of the county officers must give their full time to the service of the county and so must be paid adequate salaries. Hence the county will have need for great and varying sums of money.

339. Municipalities of all grades must add very much to such expenditures as these. Fire and police departments must be maintained; there must be pavements for the streets and public sewers; water and lighting are often provided; and there are many other expenses that rural communities do not have. Municipalities thus require proportionately the largest sums of any of the governmental organizations.

340. The state must of course have many officials, some of whom must be paid large salaries. Then it maintains many public institutions which cost annually great sums of money. It also maintains the organized militia, makes other arrangements for the enforcement of its police regulations, and maintains an elaborate system of courts and other machinery for the enforcement of its laws. This is enough to make evident that the state must annually expend several millions of dollars.

341. The questions that arise from all this are, where do these various sums of money come from and how are they obtained? The answer in the first instance is simple. Such expenditures as have been enumerated above are public expenses. They are expenditures of the people through which they seek some common advantage or hope to promote their common interests. Hence the money necessary for them the people must pay and each one must pay his proper pro-

portion. Of course this financial interest, like nearly all their other common interests, the people will manage through their established governments, and so our inquiry is as to the processes involved in this kind of governmental action.

342. The whole operation by which a government gets the money necessary for public purposes is called taxation, and several different processes are involved in it. In the first place the public work to be undertaken must be determined upon, and the necessary money must in some way be decreed; this is the *levying* of the taxes. Then the amount decreed must be apportioned to those who are ultimately to furnish it; this we may call the *assessment* of the taxes. And finally the money must be gathered together in the public treasury, the *collection* of the taxes.

343. The first of these processes is evidently legislative. As we know the people have delegated the general legislative power to the state legislature. This in turn, in various charters and acts of incorporation, has delegated certain of these powers to various local bodies, such as the boards of supervisors in counties, and the common councils in cities. But in the towns (and in country school districts) the power of local legislation has come back to the people themselves. Hence the various kinds of legislative bodies will ordinarily levy the taxes, but in the towns the people will tax themselves.

Each of the various legislative bodies is a part of the government, and speaks with authority. When it decrees that a certain amount of money is to be raised, this decree has the same force as any other law and must be obeyed. That is, taxes are not merely voluntary contributions, and if they are not paid willingly,

the state will enforce their payment by the same authority with which it enforces its other decrees. In this as in other things, the individual must conform to the public will when expressed through the proper channels.

344. The distribution of the taxes to those who are to pay them is both a legislative and an executive function. The legislature must decide upon the principles or rules that are to guide in making the apportionment. To apply the principles and make the actual distribution is of course purely executive. The main question is as to the principle of apportionment. The farming of taxes has never prevailed in America, and that method no state would now adopt. During the Revolutionary period there was great discussion with regard to *internal* and *external* taxes. External taxes would be duties on imports and these a state is forbidden to levy by the national constitution.[1] Hence a state is confined to internal taxes.

345. When we come to consider the theory that underlies the apportionment of internal taxes, the first question is shall men pay equally or in some proportion, and if proportionately, in what proportion. With a moment's consideration we see that nearly all the blessings of a stable and efficient government are of equal importance to all, and so the fundamental principle of taxation would seem to be that all should share equally in meeting the common expense. The most natural tax, in other words, would seem to be a capitation tax. But as a matter of fact, in the development of the state exactly the opposite principle has prevailed. The original "person" was the property holder; and property rights were recognized and enforced before personal rights were thought of. Our earlier laws, even to

[1] Art. I, Sec. 10.

within a century, were for the advantage of the property holder, and the tone and prejudice of our courts is still in his favor. But the enormous advantage which he has thus had he has had to pay for. The tax rule since the first irregular beginnings of the colonies has been based on the theory of protection to property, and property taxes are all but the only ones we have. The capitation or poll tax is used only for work on the highways in the country districts; and there is imperfectly enforced.[1]

346. Internal property taxes might be direct or indirect. An indirect tax might take the form of an excise, as on tobacco or spirits. The producer would then pay the tax; but he would add it to the price so that the consumer would indirectly pay it. This form of tax is not at present used by the state. Another form of it is the license or fee. The saloon keeper must pay a heavy license,[2] which of course he must recover from his business, and a franchise fee of one-half mill for each dollar of the authorized capital is required of business corporations.[3] In neither of these cases, however, is the prime purpose that of taxation, but in the one case of restraint and in the other to bring within proper state control.

The income tax would be a form of property tax, but is not at present used in Michigan. But, by a curious return to an old feudal custom, the state does in a limited way impose an inheritance tax. The tax does not apply to real estate passing in direct line; it is 1 per cent. on personal property over $5,000 (nothing for

[1] Each man between twenty-one and fifty is supposed to work on the road one day or pay one dollar in cash.

[2] *Comp. Laws*, § 5379

[3] *Ibid.*, § 8574f.

a less amount) passing in direct line and 5 per cent. in all other cases. The money thus raised goes to the primary school fund or to the state debt.[1]

347. We have left then as the chief and regular method of raising public funds in Michigan direct taxes on property. Even these are of two kinds, specific and ad valorem. Specific taxes are taxes on articles or on great properties without reference to their value. The inspection fees on salt and on kerosene oil are examples of this. They are meant only to pay the cost of inspection, but are on the safe side and usually yield to the state a small income. Until recently specific taxes were collected from all the railroads and other great public corporations. But in 1881 a law was enacted for taxing telephone and telegraph companies on a different principle. The companies were required to make a report of all their property; the auditor-general, state treasurer, and commissioner of the state land office were constituted a board to place a cash value thereon. This same board was then to levy a tax on this valuation at the average rate of the general, municipal, and local taxes levied throughout the state during the previous year.

The principle of this act was extended no farther until 1899. Then a new law was enacted[2] providing for levying a similar average tax on the property of railroad, express, telegraph and telephone companies. A commission of three members, appointed by the governor, was created to ascertain the cash value of the property of the companies, and was given ample power for its purposes. The taxes collected under this act go to pay the interest on the state debt, and if more is

[1] Public Acts of 1899, p. 285,
[2] *Ibid.*, p. 21.

realized than is required for this purpose, it goes to the primary school fund and is distributed to the public schools. In 1901 the law was again strengthened and the commission given great control over local assessing officers. The result has been a great increase in the taxes of these corporations. The primary school fund has been greatly increased and there has been a corresponding reduction in local taxation for school purposes.

348. Here then is an ad valorem tax. But it is a tax only on certain specified classes of property, and the money raised by it is applied only to a specified purpose. All other expenditures by the state, and all local expenditures are yet to be provided for, and there is left but one method of taxation. This is the ad valorem tax on all property. That is, all the property in the state must be valued, and the various taxes apportioned accordingly. This is our main taxing system and what remains for us to consider now is the problem of putting it in operation.

349. First let us notice that we have now to deal with both state and local taxes, and of the latter there are several classes. Even if we had to deal with state taxes alone, the state would have to be divided into districts of some kind for taxing purposes. It is, as we know, divided into counties, and counties are subdivided. These subdivisions give us the units for all kinds of taxes. They are towns and cities, and these two are exclusive. A village, for example, may be within a town, but a city cannot, though a single town may extend all around it. The city and town are separate and distinct organizations. No property can lie in both a town and a city or be subject to both a town and city tax.

Just the opposite is true of the relation of town or city and county. A county is wholly composed of towns and cities. All property therefore will be within both a county and a town or city, and will be subject to a county tax and a town or city tax. In the same way all property in Michigan will be subject to the state government and to a state tax. We have already seen that there is a fourth tax, *viz.:* the school tax. From this we see that property in the state will be subject to four different taxes, the local tax, town or city, the county tax, the school tax and the state tax. Within a village there may also be a village tax.

350. First let us look to the town tax. As we have seen, the people of the town will vote the amount of money to be raised in town meeting. They must vote the amount necessary for running expenses, not to exceed $1,000,[1] and if they fail to do so the town board may vote it for them.[2] The money thus voted will be an ad valorem tax on the property of the township. This means that a value must be put on all the property. It is the duty of the supervisor to do this, as he is the town assessor,[3] and he must then spread the tax in proportion to the value of the property. He, in other words, makes out the assessment or tax roll. The roll is then passed over to the treasurer who collects the tax.

351. In cities the process is about the same. The common council, a representative body, instead of the citizens, votes the levy. In cities of the fourth class the supervisor in each ward is the assessor, and the city treasurer is the collector. In larger cities there is

[1] *Comp. Laws,* §§ 2269, 2270.
[2] *Ibid.,* § 2349.
[3] *Ibid.,* § 2332.

a special officer (or a board) who is assessor for the whole city.

352. For the county the board of supervisors is the legislative body, and hence makes the tax levy. The board can vote the money necessary for running expenses, but for other purposes if it wishes to raise over $1,000 it must resort to the *plébiscite*. When the county tax is voted there are no county officials to assess and collect it. The county is not a taxing district. So the amount to be raised is first divided up among the towns. Each town has to furnish a certain portion of the whole, and when that portion is determined, the town supervisor assesses the county tax as he does the town tax. The township treasurer collects it and pays it over to the county treasurer.

353. Here then is a new process, the division of the tax levy among the towns, and out of it comes a new question, what principle guides in this division? The answer seems easy; it is an ad valorem tax, and so should be divided among the towns according to their assessed valuation. This answer would be correct but for one thing; all supervisors do not value property alike, and such a rule would be a constant temptation to make their valuation low. It would, in other words, work unjustly to the very towns which had the best supervisors. To remedy this the assessed valuations of the different towns are brought together, compared and "equalized," and the board of supervisors, at its October meeting, is the board of equalization. The equalization is affected by adding to, or subtracting from, the total valuation of the various towns as shown by the supervisors' rolls. The county tax is then divided according to these equalized valuations.

354. For the state tax, the legislature of course

votes the amount to be raised. But the state also has neither assessing nor collecting officers. The amount is accordingly divided among the counties. If for this purpose the total assessed valuation of counties were used, the valuations shown by the supervisors' rolls, there would be the same difficulties as in the case of the townships. Hence there must be a state board of equalization. This board is composed of the lieutenant-governor, auditor-general, secretary of state, state treasurer, and commissioner of the land office. It meets every fifth year (beginning with 1851) and equalizes by adding to, or taking from, the assessed valuations of counties as reported by the boards of supervisors. Based on this equalization, the auditor-general certifies to each county the amount of state tax it must furnish. The board of supervisors then apportions the tax to the towns exactly as it does the county tax. The supervisor assesses it; the town treasurer collects it, and turns it over to the county treasurer, by whom it is forwarded to the state treasurer. Thus the supervisor and township treasurer are both county and state officers as well as town officers. The supervisor's tax roll will contain all the various kinds of taxes (town, county, state) levied, and also the school tax. That is, there is but one set of assessing and collecting officers. In cities there are some variations from the methods described but none that interfere with the general system, or that we need to follow out now.

355. One thing so far omitted may now be mentioned. Not quite all property is subject to taxation. All public property is of course omitted from the tax rolls, whether of the United States, the state, counties, or towns, or cities.

Other omissions are churches and the land on which

they actually stand, schools and all benevolent and scientific institutions. Then certain private property is also exempt; private libraries, household furniture to the amount of $500, tools of the mechanic to the value of $100, etc.[1]

[1] See *Comp. Laws*, §§ 3830, 3832.

APPENDIX

I. Ordinance of 1787[1]

For the Government of the Territory of the United States, North-west of the River Ohio.

1. Be it ordained by the United States, in Congress assembled, That the said territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of congress, make it expedient.

2. Be it ordained by the authority aforesaid, That the estates, both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to and be distributed among their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grandchild, to take a share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate, shall have, in equal parts among them, their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descendants and dower shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws, as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses,

[1] The Ordinance as here given is taken from the copy in the Revised Statutes of Michigan of 1837-8. The section numbers do not belong to the Original Ordinance, but are retained here for convenience of reference.

provided such wills be duly proved, such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskias, Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

3. Be it ordained by the authority aforesaid, That there shall be appointed, from time to time, by congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

4. There shall be appointed from time to time, by congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings every six months, to the secretary of congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

5. The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original states, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to congress from time to time; which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

6. The governor for the time being, shall be commander in chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by congress.

7. Previous to the organization of the general assembly,

the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties of the magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed shall, during the continuance of this temporary government, be appointed by the governor.

8. For the prevention of crimes and injuries, the laws to be adopted or made, shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

9. So soon as there shall be five thousand free male inhabitants of full age in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: Provided, That for every five hundred free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five, after which, the number and proportion of representatives shall be regulated by the legislature: Provided, That no person be eligible or disqualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years, and in either case shall likewise hold in his own right, in fee simple, two hundred acres of land within the same: Provided also, That a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold, and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

10. The representative thus elected shall serve for the term of two years; and in case of death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

11. The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by congress; any three of whom to be a quorum. And the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to congress; five of whom congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy; and return their names to congress; one of whom congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of the council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to congress; five of whom congress shall appoint and commission to serve as members of the council for five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws, in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared: And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when in his opinion it shall be expedient.

12. The governor, judges, legislative council, secretary, and such other officers as congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office; the governor before the president of congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled in one room, shall have authority, by joint ballot, to elect a delegate to congress, who shall have a seat in congress, with a right of debating, but not of voting, during this temporary government.

13. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws, and constitutions are erected; to fix and

establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in the said territory; to provide also for the establishment of states, and permanent governments therein, and for their admission to a share in the federal councils, on an equal footing with the original states, at as early periods as may be consistent with the general interest:

14. It is hereby ordained and declared, by the authority aforesaid, That the following articles shall be considered as articles of compact between the original states, and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit:

ARTICLE I

No person demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ARTICLE II

The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall in any manner whatever interfere with or affect private contracts or engagements, bona fide, and without fraud previously formed.

ARTICLE III

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent, and in their property, rights, and liberty, they

shall never be invaded or disturbed, unless in just and lawful wars, authorized by congress; but laws, founded in justice and humanity, shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ARTICLE IV

The said territory, and the states which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in congress assembled, conformably thereto. The inhabitants and settlers in the said territory, shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by congress, according to the same common rule and measure by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new states, as in the original states, within the time agreed upon by he United States in congress assembled. The legislatures of those districts or new states, shall never interfere with the primary disposal of the soil by the United States in congress assembled, nor with any regulations congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands, the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ARTICLE V

There shall be formed in the said territory, not less than three, nor more than five states; and the boundaries of the states, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit: The western state in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash, and Post Vincents, due

north to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami, to the said territorial line, and by the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania and the said territorial line: Provided, however, and it is further understood and declared, That the boundaries of these three states shall be subject so far to be altered, that if congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted, by its delegates, into the congress of the United States, on an equal footing with the original states, in all respects whatever; and shall be at liberty to form a permanent constitution and state government. Provided, The constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interests of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand.

ARTICLE VI

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: Provided always, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service, as aforesaid.

Be it ordained by the authority aforesaid, That the resolutions of the twenty-third of April, one thousand seven hundred and eighty-four, relative to the subject of this ordinance, be and the same are hereby repealed, and declared null and void.

Done by the United States, in congress assembled, the thirteenth day of July, in the year of our Lord one thousand seven hundred and eighty-seven, and of their sovereignty and independence the twelfth.

II. An Act to Provide for the Government of the Territory Northwest of the River Ohio.—Approved Aug. 7, 1789.[1]

WHEREAS, in order that the ordinance of the United States in Congress assembled, for the government of the territory northwest of the river Ohio, may continue to have full effect, it is requisite that certain provisions should be made, so as to adapt the same to the present constitution of the United States:

Sec. 1. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That in all cases in which, by the said ordinance, any information is to be given, or communication made, by the governor of the said territory, to the United States in Congress assembled, or to any of their officers, it shall be the duty of the said governor to give such information, and to make such communication, to the President of the United States; and the president shall nominate, and, by and with the advice and consent of the senate, shall appoint all officers, which, by the said ordinance, were to have been appointed by the United States in Congress assembled; and all officers, so appointed, shall be commissioned by him; and in all cases where the United States in Congress assembled, might, by the said ordinance, revoke any commission or remove from any office, the president is hereby declared to have the same power of revocation and removal.

Sec. 2. And be it further enacted, That in case of the death, removal, resignation, or necessary absence, of the governor of the said territory, the secretary thereof shall be, and he is hereby authorised and required to execute all the powers, and perform all the duties of the governor, during the vacancy occasioned by the removal, resignation, or necessary absence of the said governor.

III. An Act to Admit the State of Michigan into the Union, upon an Equal Footing with the Original States[1]

Whereas, in pursuance of the act of congress of June the fifteenth, eighteen hundred and thirty-six, entitled "An act to

[1] Taken from the Territorial Laws of Michigan of 1833.

[1] Taken from the Revised Statutes of Michigan of 1838.

establish the northern boundary of the state of Ohio, and to provide for the admission of the state of Michigan into the union upon the conditions therein expressed," a convention of delegates, elected by the people of the said state of Michigan, for the sole purpose of giving their assent to the boundaries of the said state of Michigan, as described, declared and established in and by the said act, did on the fifteenth of December, eighteen hundred and thirty-six, assent to the provisions of said act, therefore:

SECTION I

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the state of Michigan shall be one, and is hereby declared to be one, of the United States of America, and admitted into the union on an equal footing with the original states, in all respects whatever.

SECTION II

And be it further enacted, That the secretary of the treasury, in carrying into effect the thirteenth and fourteenth sections of the act of the twenty-third of June, eighteen hundred and thirty-six, entitled "An act to regulate the deposites of the public money," shall consider the state of Michigan as being one of the United States.

Approved, January 26, 1837.

IV. Constitution of Michigan[1]

1835

We, the people of the territory of Michigan, as established by the act of congress of the eleventh of January, eighteen hundred and five, in conformity to the fifth article of the ordinance providing for the government of the territory of the United States, north-west of the river Ohio, believing that the time has arrived when our present political condition ought to cease, and the right of self-government be asserted; and availing ourselves of the aforesaid ordinance of the congress of the United States of the thirteenth day of July, seventeen hundred and eighty seven, and the acts of congress passed in accordance therewith, which entitled us to admission into the union, upon a condition which has been fulfilled, do, by our

[1] Taken from the Revised Statutes of Michigan of 1837-8.

delegates in convention assembled, mutually agree to form ourselves into a free and independent state, by the style and title of "The State of Michigan," and do ordain and establish the following constitution for the government of the same:

ARTICLE I

1. All political power is inherent in the people.

2. Government is instituted for the protection, security, and benefit of the people; and they have the right at all times to alter or reform the same, and to abolish one form of government and establish another, whenever the public good requires it.

3. No man or set of men are entitled to exclusive or separate privileges.

4. Every person has a right to worship Almighty God according to the dictates of his own conscience; and no person can of right be compelled to attend, erect, or support, against his will, any place of religious worship, or pay any tithes, taxes, or other rates, for the support of any minister of the gospel or teacher of religion.

5. No money shall be drawn from the treasury for the benefit of religious societies, or theological or religious seminaries.

6. The civl and religious rights, privileges, and capacities of no individual shall be diminished or enlarged on account of his opinion or belief concerning matters of religion.

7. Every person may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no laws shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury, that the matter charged as libellous, is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

8. The person, houses, papers and possessions of every individual, shall be secure from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or things, shall issue without describing them, nor without probable cause, supported by oath or affirmation.

9. The right of trial by jury shall remain inviolate.

10. In all criminal prosecutions, the accused shall have the

right to a speedy and public trial by an impartial jury of the vicinage; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have the assistance of counsel for his defence; and in all civil cases, in which personal liberty may be involved, the trial by jury shall not be refused.

11. No person shall be held to answer for a criminal offence, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or militia when in actual service in time of war or public danger.

12. No person for the same offence shall be twice put in jeopardy of punishment; all persons shall, before conviction, be bailable by sufficient sureties, except for capital offences, when the proof is evident or the presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when, in case of rebellion or invasion, the public safety may require it.

13. Every person has a right to bear arms for the defence of himself and the state.

14. The military shall, in all cases, and at all times, be in strict subordination to the civil power.

15. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner prescribed by law.

16. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

17. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall be passed.

18. Excessive bail shall not be required; excessive fines shall not be imposed; and cruel and unjust punishments shall not be inflicted.

19. The property of no person shall be taken for public use, without just compensation therefor.

20. The people shall have the right freely to assemble together, to consult for the common good, to instruct their representatives, and to petition the leigslature for redress of grievances.

21. All acts of the legislature, contrary to this or any other article of this constitution, shall be void.

ARTICLE II

Electors

1. In all elections, every white male citizen above the age of twenty-one years, having resided in the state six months next preceding any election, shall be entitled to vote at such election; and every white male inhabitant of the age aforesaid, who may be a resident of this state at the time of the signing of this constitution, shall have the right of voting as aforesaid; but no such citizen or inhabitant shall be entitled to vote except in the district, county, or township in which he shall actually reside at the time of such election.

2. All votes shall be given by ballot, except for such township officers as may, by law, be directed to be otherwise chosen.

3. Electors shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at election, and in going to and returning from the same.

4. No elector shall be obliged to do militia duty on the days of elections, except in time of war or public danger.

5. No person shall be deemed to have lost his residence in this state, by reason of his absence on business of the United States, or of this state.

6. No soldier, seaman, or marine, in the army or navy of the United States, shall be deemed a resident of this state, in consequence of being stationed in any military or naval place within the same.

ARTICLE III

Division of the Powers of Government

1. The powers of the government shall be divided into three distinct departments: the legislative, the executive, and the judicial; and one department shall never exercise the powers of another, except in such cases as are expressly provided for in this constitution.

ARTICLE IV

Legislative Department

1. The legislative power shall be vested in a senate and house of representatives.

2. The number of the members of the house of representatives shall never be less than forty-eight, nor more than one

hundred; and the senate shall, at all times, equal in number one-third of the house of representatives as near as may be.

3. The legislature shall provide by law for an enumeration of the inhabitants of this state in the years eighteen hundred and thirty-seven, and eighteen hundred and forty-five, and every ten years after the said last mentioned time; and at their first session after each enumeration so made as aforesaid, and also after each enumeration made by the authority of the United States, the legislature shall apportion anew the representatives and senators among the several counties and districts according to the number of white inhabitants.

4. The representatives shall be chosen annually on the first Monday of November, and on the following day, by the electors of the several counties or districts into which the state shall be divided for that purpose. Each organized county shall be entitled to at least one representative; but no county hereafter organized, shall be entitled to a separate representative, until it shall have attained a population equal to the ratio of representation hereafter established.

5. The senators shall be chosen for two years, at the same time and in the same manner as the representatives are required to be chosen. At the first session of the legislature under this constitution, they shall be divided by lot from their respective districts, as nearly as may be, into two equal classes; the seats of the senators of the first class shall be vacated at the expiration of the first year, and of the second class at the expiration of the second year, so that one-half thereof, as nearly as may be, shall be chosen annually thereafter.

6. The state shall be divided, at each new apportionment, into a number of not less than four, nor more than eight, senatorial districts, to be always composed of contiguous territory, so that each district shall elect an equal number of senators annually, as nearly as may be; and no county shall be divided in the formation of such districts.

7. Senators and representatives shall be citizens of the United States, and be qualified electors in the respective counties and districts which they represent: and a removal from their respective counties or districts shall be deemed a vacation of their seats.

8. No person holding any office under the United States, or of this state, officers of the militia, justices of the peace, associate judges of the circuit and county courts, and postmasters excepted, shall be eligible to either house of the legislature.

9. Senators and representatives shall, in all cases except

treason, felony, or breach of the peace, be privileged from arrest, nor shall they be subject to any civil process, during the session of the legislature, nor for fifteen days next before the commencement and after the termination of each session.

10. A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each house may provide. Each house shall choose its own officers.

11. Each house shall determine the rules of its proceedings, and judge of the qualifications, elections, and returns of its own members; and may, with the concurrence of two-thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause, nor for any cause known to his constituents antecedent to his election.

12. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy: and the yeas and nays of the members of either house, on any question, shall, at the request of one-fifth of the members present, be entered on the journal. Any member of either house shall have liberty to dissent from and protest against any act or resolution which he may think injurious to the public or an individual, and have the reasons of this dissent entered on the journal.

13. In all elections by either or both houses, the votes shall be given viva voce; and all votes on nominations made to the senate shall be taken by yeas and nays, and published with the journal of its proceedings.

14. The doors of each house shall be open, except when the public welfare shall require secrecy; neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that where the legislature may then be in session.

15. Any bill may originate in either house of the legislature.

16. Every bill passed by the legislature shall, before it becomes a law, be presented to the governor; if he approves, he shall sign it; but if not, he shall return it, with his objections, to that house in which it originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of all the members present agree to pass the bill, it shall be sent, with the objections, to the other house, by whom it shall likewise be reconsidered; and if approved also by two-thirds of all the members present in that house, it shall become a law; but in

such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journals of each house respectively: And if any bill be not returned by the governor within ten days, Sundays excepted, after it has been presented to him, the same shall become a law, in like manner as if he had signed it, unless the legislature by their adjournment prevent its return, in which case it shall not become a law.

17. Every resolution to which the concurrence of the senate and house of representatives may be necessary, except in cases of adjournment, shall be presented to the governor, and before the same shall take effect, shall be proceeded upon in the same manner as in the case of a bill.

18. The members of the legislature shall receive, for their services, a compensation to be ascertained by law, and paid out of the public treasury; but no increase of the compensation shall take effect during the term for which the members of either house shall have been elected; and such compensation shall never exceed three dollars a day.

19. No member of the legislature shall receive any civil appointment from the governor and senate, or from the legislature, during the term for which he is elected.

20. The governor shall issue writs of election to fill such vacancies as may occur in the senate and house of representatives.

21. The legislature shall meet on the first Monday in January, in every year, and at no other period, unless otherwise directed by law, or provided for in this constitution.

22. The style of the laws of this state shall be: "Be it enacted by the Senate and House of Representatives of the State of Michigan."

ARTICLE V

Executive Department

1. The supreme power shall be vested in a governor who shall hold his office for two years; and a lieutenant governor shall be chosen at the same time and for the same term.

2. No person shall be eligible to the office of governor or lieutenant governor, who shall not have been five years a citizen of the United States, and a resident of this state two years next preceding the election.

3. The governor and lieutenant governor shall be elected by the electors at the times and places of choosing members of the legislature. The persons having the highest number of

votes for governor and lieutenant governor shall be elected; but in case two or more have an equal and the highest number of votes for governor or lieutenant governor, the legislature shall by joint vote choose one of the said persons so having an equal and the highest number of votes, for governor or lieutenant governor.

4. The returns of every election for governor and lieutenant governor, shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the president of the senate, who shall open and publish them in the presence of the members of both houses.

5. The governor shall be commander in chief of the militia, and of the army and navy of this state.

6. He shall transact all executive business with the officers of government, civil and military; and may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

7. He shall take care that the laws be faithfully executed.

8. He shall have power to convene the legislature on extraordinary occasions. He shall communicate by message to the legislature, at every session, the condition of the state, and recommend such matters to them as he shall deem expedient.

9. He shall have power to adjourn the legislature to such time as he may think proper, in case of a disagreement between the two houses with respect to the time of adjournment, but not to a period beyond the next annual meeting.

10. He may direct the legislature to meet at some other place than the seat of government, if that shall become, after its adjournment, dangerous from a common enemy or a contagious disease.

11. He shall have power to grant reprieves and pardons after conviction, except in cases of impeachment.

12. When any office, the appointment to which is vested in the governor and senate, or in the legislature, becomes vacant during the recess of the legislature, the governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the succeeding session of the legislature.

13. In case of the impeachment of the governor, his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant governor until such disability shall cease, or the vacancy be filled.

14. If, during the vacancy of the office of governor, the lieutenant governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate, pro tempore, shall act as governor, until the vacancy be filled.

15. The lieutenant governor shall, by virtue of his office, be president of the senate; in committee of the whole, he may debate on all questions; and when there is an equal division, he shall give the casting vote.

16. No member of congress, nor any other person holding office under the United States, or this state, shall execute the office of governor.

17. Whenever the office of governor or lieutenant governor becomes vacant, the person exercising the powers of governor for the time being shall give notice thereof, and the electors shall, at the next succeeding annual election for members of the legislature, choose a person to fill such vacancy.

18. The governor shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the term for which he has been elected.

19. The lieutenant governor, except when acting as governor, and the president of the senate pro tempore, shall each receive the same compensation as shall be allowed to the speaker of the house of representatives.

20. A great seal for the state shall be provided by the governor, which shall contain the device and inscriptions represented and described in the papers relating thereto, signed by the president of the convention, and deposited in the office of the secretary of the territory. It shall be kept by the secretary of state; and all official acts of the governor, his approbation of the laws excepted, shall be thereby authenticated.

21. All grants and commissions shall be in the name, and by the authority, of the people of the state of Michigan.

ARTICLE VI

Judicial Department

1. The judicial power shall be vested in one supreme court, and in such other courts as the legislature may from time to time establish.

2. The judges of the supreme court shall hold their offices for the term of seven years; they shall be nominated, and with the advice and consent of the senate, appointed by the governor. They shall receive an adequate compensation, which shall not be diminished during their continuance in

office. But they shall receive no fees nor perquisites of office, nor hold any other office of profit or trust under the authority of this state, or of the United States.

3. A court of probate shall be established in each of the organized counties.

4. Judges of all county courts, associate judges of circuit courts, and judges of probate, shall be elected by the qualified electors of the county in which they reside, and shall hold their offices for four years.

5. The supreme court shall appoint their clerk or clerks; and the electors of each county shall elect a clerk, to be denominated a county clerk, who shall hold his office for the term of two years, and shall perform the duties of clerk to all the courts of record to be held in each county, except the supreme court and court of probate.

6. Each township may elect four justices of the peace, who shall hold their offices for four years; and whose powers and duties shall be defined and regulated by law. At their first election they shall be classed and divided by lot into numbers one, two, three, and four, to be determined in such manner as shall be prescribed by law, so that one justice shall be annually elected in each township thereafter. A removal of any justice from the township in which he was elected, shall vacate his office. In all incorporated towns, or cities, it shall be competent for the legislature to increase the number of justices.

7. The style of all process shall be "In the name of the people of the state of Michigan:" and all indictments shall conclude, "against the peace and dignity of the same."

ARTICLE VII

Certain State and County Officers

1. There shall be a secretary of state, who shall hold his office for two years, and who shall be appointed by the governor, by and with the advice and consent of the senate. He shall keep a fair record of the official acts of the legislative and executive departments of the government; and shall, when required, lay the same, and all matters relative thereto, before either branch of the legislature; and shall perform such other duties as shall be assigned him by law.

2. A state treasurer shall be appointed by a joint vote of the two houses of the legislature, and shall hold his office for the term of two years.

3. There shall be an auditor general and an attorney gen-

eral for the state, and a prosecuting attorney for each of the respective counties, who shall hold their offices for two years, and who shall be appointed by the governor, by and with the advice and consent of the senate, and whose powers and duties shall be prescribed by law.

4. There shall be a sheriff, a county treasurer, and one or more coroners, a register of deeds, and a county surveyor, chosen by the electors in each of the several counties once in every two years, and as often as vacancies shall happen. The sheriff shall hold no other office, and shall not be capable of holding the office of sheriff longer than four in any term of six years; he may be required by law to renew his security from time to time, and in default of giving such security, his office shall be deemed vacant; but the county shall never be made responsible for the acts of the sheriff.

ARTICLE VIII

Impeachments and Removals from Office

1. The house of representatives shall have the sole power of impeaching all civil officers of the state, for corrupt conduct in office, or for crimes and misdemeanors; but a majority of all the members elected shall be necessary to direct an impeachment.

2. All impeachments shall be tried by the senate. When the governor or lieutenant governor shall be tried, the chief justice of the supreme court shall preside. Before the trial of an impeachment, the members of the court shall take an oath or affirmation truly and impartially to try and determine the charge in question, according to the evidence; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend further than to removal from office; but the party convicted shall be liable to indictment and punishment according to law.

3. For any reasonable cause which shall not be sufficient grounds for the impeachment of the judges of any of the courts, the governor shall remove any of them on the address of two-thirds of each branch of the legislature; but the cause or causes for which such removal may be required, shall be stated at length in the address.

4. The legislature shall provide by law for the removal of justices of the peace, and other county and township officers, in such manner and for such cause as to them shall seem just and proper.

ARTICLE IX

Militia

1. The legislature shall provide by law for organizing and disciplining the militia, in such manner as they shall deem expedient, not incompatible with the constitution and laws of the United States.

2. The legislature shall provide for the efficient discipline of the officers, commissioned and non-commissioned, and musicians, and may provide by law for the organization and discipline of volunteer companies.

3. Officers of the militia shall be elected or appointed in such manner as the legislature shall from time to time direct, and shall be commissioned by the governor.

4. The governor shall have power to call forth the militia, to execute the laws of the state, to suppress insurrections, and repel invasions.

ARTICLE X

Education

1. The governor shall nominate, and by and with the advice and consent of the legislature, in joint vote, shall appoint a superintendent of public instruction, who shall hold his office for two years, and whose duties shall be prescribed by law.

2. The legislature shall encourage, by all suitable means, the promotion of intellectual, scientifical, and agricultural improvement. The proceeds of all lands that have been or hereafter may be granted by the United States to this state, for the support of schools, which shall hereafter be sold or disposed of, shall be and remain a perpetual fund; the interest of which, together with the rents of all such unsold lands, shall be inviolably appropriated to the support of schools throughout the state.

3. The legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each school district, at least three months in every year; and any school district neglecting to keep up and support such a school, may be deprived of its equal proportion of the interest of the public fund.

4. As soon as the circumstances of the state will permit, the legislature shall provide for the establishment of libraries; one at least in each township; and the money which shall be paid by persons as an equivalent for exemption from military

duty, and the clear proceeds of all fines assessed in the several counties for any breach of the penal laws, shall be exclusively applied to the support of said libraries.

5. The legislature shall take measures for the protection, improvement, or other disposition of such lands as have been or may hereafter be reserved or granted by the United States to this state for the support of a university; and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be and remain a permanent fund for the support of said university, with such branches as the public convenience may hereafter demand for the promotion of literature, the arts and sciences, and as may be authorized by the terms of such grant: And it shall be the duty of the legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said university.

ARTICLE XI

Prohibition of Slavery

1. Neither slavery nor involuntary servitude shall ever be introduced into this state, except for the punishment of crimes of which the party shall have been duly convicted.

ARTICLE XII

Miscellaneous Provisions

1. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may by law be exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States, and the constitution of this state, and that I will faithfully discharge the duties of the office of ..... according to the best of my ability." And no other oath, declaration, or test, shall be required as a qualification for any office or public trust.

2. The legislature shall pass no act of incorporation, unless with the assent of at least two-thirds of each house.

3. Internal improvement shall be encouraged by the government of this state; and it shall be the duty of the legislature, as soon as may be, to make provision by law for ascertaining the proper objects of improvement in relation to roads, canals, and navigable waters; and it shall also be their

duty to provide by law for an equal, systematic, economical, application of the funds which may be appropriated to these objects.

4. No money shall be drawn from the treasury but in consequence of appropriations made by law, and an accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws annually.

5. Divorces shall not be granted by the legislature; but the legislature may by law authorize the higher courts to grant them, under such restrictions as they may deem expedient.

6. No lottery shall be authorized by this state, nor shall the sale of lottery tickets be allowed.

7. No county now organized by law shall ever be reduced, by the organization of new counties, to less than four hundred square miles.

8. The governor, secretary of state, treasurer, and auditor general, shall keep their offices at the seat of government.

9. The seat of government for this state shall be at Detroit, or at such other place or places as may be prescribed by law, until the year eighteen hundred and forty seven, when it shall be permanently located by the legislature.

10. The first governor and lieutenant governor shall hold their offices until the first Monday of January eighteen hundred and thirty-eight, and until others shall be elected and qualified; and thereafter they shall hold their offices for two years, and until their successors shall be elected and qualified.

11. When a vacancy shall happen, occasioned by the death, resignation, or removal from office of any person holding office, under this state, the successor thereto shall hold his office for the period which his predecessor had to serve, and no longer, unless again chosen or reappointed.

ARTICLE XIII

Mode of Amending and Revising the Constitution

1. Any amendment or amendments to this constitution may be proposed in the senate or house of representatives; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen; and shall be published for three months previous to the time of making such choice: And if in the legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds

of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the legislature shall prescribe: and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become part of the constitution.

2. And if at any time two-thirds of the senate and house of representatives shall think it necessary to revise or change this entire constitution, they shall recommend to the electors at the next election for members of the legislature, to vote for or against a convention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a convention, the legislature shall at its next session provide by law for calling a convention, to be holden within six months after the passage of such law; and such convention shall consist of a number of members not less than that of both branches of the legislature.

SCHEDULE

1. That no inconvenience may arise from a change of the territorial government to a permanent state government, it is declared that all writs, actions, prosecutions, contracts, claims and rights of individuals and of bodies corporate shall continue as if no change had taken place in this government; and all process which may, before the organization of the judicial department under this constitution, be issued under the authority of the territory of Michigan, shall be as valid as if issued in the name of the state.

2. All laws now in force in the territory of Michigan, which are not repugnant to this constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the legislature.

3. All fines, penalties, forfeitures and escheats, accruing to the territory of Michigan, shall accrue to the use of the state.

4. All recognizances heretofore taken, or which may be taken before the organization of the judicial department under this constitution, shall remain valid, and shall pass over to, and may be prosecuted in the name of the state. And all bonds executed to the governor of this territory, or to any other officer in his official capacity, shall pass over to the governor or other proper state authority, and to their successors in office, for the uses therein respectively expressed, and may

be sued for and recovered accordingly. All criminal prosecutions and penal actions, which have arisen, or which may arise before the organization of the judicial department under this constitution, and which shall then be depending, may be prosecuted to judgment and execution in the name of the state.

5. All officers, civil and military, now holding their offices and appointments in this territory under the authority of the United States, or under the authority of this territory, shall continue to hold and exercise their respective offices and appointments until superseded under this constitution.

6. The first election for governor, lieutenant governor, members of the state legislature, and a representative in the Congress of the United States, shall be held on the first Monday in October next, and on the succeeding day. And the president of the convention shall issue writs to the sheriffs of the several counties or districts, or, in case of vacancy, to the coroners, requiring them to cause such election to be held on the days aforesaid, in their respective counties or districts. The election shall be conducted in the manner prescribed, and by the township officers designated as inspectors of elections, and the returns made as required by the existing laws of the territory, or by this constitution: Provided, however, That the returns of the several townships in the district composed of the unorganized counties of Ottawa, Ionia, Kent and Clinton, shall be made to the clerk of the township of Kent, in said district, and the said township clerk shall perform the same duties, as by the existing laws of the territory, devolve upon the clerks of the several counties in similar cases.

7. The first meeting of the legislature shall be at the city of Detroit, on the first Monday in November next, with power to adjourn to any other place.

8. All county and township officers shall continue to hold their respective offices, unless removed by competent authority, until the legislature shall, in conformity to the provisions of this constitution, provide for the holding of elections to fill such offices respectively.

9. This constitution shall be submitted, at the election to be held on the first Monday in October next, and on the succeeding day, for ratification or rejection, to the electors qualified by this constitution to vote at all elections; and if the same be ratified by the said electors, the same shall become the constitution of the state of Michigan. At the election aforesaid, on such of the ballots as are for the said constitution, shall be written or printed the word "yes," and on those which are against the ratification of said constitution, the word

"no." And the returns of the votes on the question of ratification or rejection of said constitution, shall be made to the president of this convention at any time before the first Monday in November next, and a digest of the same communicated by him to the senate and house of representatives on that day.

10. And if this constitution shall be ratified by the people of Michigan, the president of this convention shall, immediately after the same shall be ascertained, cause a fair copy thereof, together with an authenticated copy of the act of the legislative council, entitled "An act to enable the people of Michigan to form a constitution and state government," approved January 26, 1835, providing for the calling of this convention, and also a copy of so much of the last census of this territory as exhibits the number of the free inhabitants of that part thereof which is comprised within the limits in said constitution defined as the boundaries of the proposed state of Michigan, to be forwarded to the president of the United States, together with an expression of the decided opinion of this convention, that the number of free inhabitants of said proposed state now exceeds the number requisite to constitute two congressional districts, and the respectful request of this convention, in behalf of the people of Michigan, that all said matters may be by him laid before the Congress of the United States at their next session.

11. In case of the failure of the president of this convention to perform the duties prescribed by this constitution by reason of his absence, death, or from any other cause, said duties shall be performed by the secretaries of this convention.

12. Until the first enumeration shall be made as directed by this constitution, the county of Wayne shall be entitled to eight representatives; the county of Monroe to four representatives; the county of Washtenaw to seven representatives; the county of St. Clair to one representative; the county of St. Joseph to two representatives; the county of Berrien to one representative; the county of Calhoun to one representative; the county of Jackson to one representative; the county of Cass to two representatives; the county of Oakland to six representatives; the county of Macomb to three representatives; the county of Lenawee to four representatives; the county of Kalamazoo, and the unorganized counties of Allegan and Barry to two representatives; the county of Branch to one representative; the county of Hillsdale to one representative; the county of Lapeer to one representative; the county of Saginaw, and the unorganized counties of Genesee

and Shiawassee to one representative; the county of Michilimackinac to one representative; the county of Chippewa to one representative; and the unorganized counties of Ottawa, Kent, Ionia and Clinton to one representative.

And for the election of senators, the state shall be divided into five districts, and the apportionment shall be as follows: The county of Wayne shall comprise the first district, and elect three senators; the counties of Monroe and Lenawee shall compose the second district, and elect three senators; the counties of Hillsdale, Branch, St. Joseph, Cass, Berrien, Kalamazoo and Calhoun shall compose the third district, and elect three senators; the counties of Washtenaw and Jackson shall compose the fourth district, and elect three senators; and the counties of Oakland, Lapeer, Saginaw, Macomb, St. Clair, Michilimackinac and Chippewa shall compose the fifth district, and elect four senators.

Any country attached to any county for judicial purposes, if not otherwise represented, shall be considered as forming part of such county, so far as regards elections for the purpose of representation in the legislature.

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